United Nations A/65/310

General Assembly

Distr.: General
19 August 2010

Original: English

Sixty-fifth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises**

Summary

The present report provides an overview of the main developments related to the work of the Special Representative in implementing his mandate, with a focus on the period since the presentation of his latest report to the Human Rights Council (A/HRC/14/27) in June 2010. As discussed with the Council at that time, the Special Representative will submit two products at the end of his mandate in June 2011: a set of guiding principles for the implementation of the "protect, respect and remedy" framework, and an options paper outlining possible ways the Council might follow up on the mandate. The present report notes the consultative process that the Special Representative will pursue in elaborating the guiding principles, addresses some of the challenges posed by the issue of extraterritorial jurisdiction in the context of business and human rights, discusses the scope and application of the corporate responsibility to respect human rights in the supply chains of business enterprises and provides an update on activities and developments related to the Special Representative's work to promote the framework.

* A/65/150.

** The present report was submitted late in order to include the most recent developments.

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I. Introduction

1. In June 2010, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises presented his second report to the Human Rights Council (A/HRC/14/27) on the implementation of his mandate to operationalize the "protect, respect and remedy" framework, which had been unanimously welcomed by the Council in 2008 (see Council resolution 8/7).

2. The present report discusses his efforts to further operationalize the protect, respect and remedy framework through the development of guiding principles for its implementation. The report goes on to discuss two of the most challenging issues relating to the business and human rights debate, namely extraterritorial jurisdiction and the scope and application of the corporate responsibility to respect human rights in the supply chain of a business enterprise. Finally, it provides an update on activities and developments related to the Special Representative's work to promote the framework.

II. Towards operationalizing the protect, respect and remedy framework

3. In 2008, the Human Rights Council was unanimous in welcoming the protect, respect and remedy framework for better managing business and human rights issues, which was presented by the Special Representative. In deciding to extend his mandate until 2011, the Council tasked the Special Representative with operationalizing and promoting the framework.

4. From the outset, the Special Representative has maintained that business and human rights challenges reflect a broader institutional misalignment between the scope and impact of economic forces and actors and the capacity of societies to manage their adverse consequences. The protect, respect and remedy framework is intended to help close those gaps.

5. The framework comprises three pillars: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others, and to address such adverse impacts as may occur; and greater access by victims to effective remedy, judicial and non-judicial. It is now widely known as the United Nations framework for business and human rights.

A. Guiding principles for the implementation of the protect, respect and remedy framework

6. As discussed with the Human Rights Council in June 2010, the Special Representative will provide a set of guiding principles on the implementation of the protect, respect and remedy framework at the end of his mandate in June 2011. The guiding principles will relate to each pillar of the framework. They will be general enough to be universally applicable, thus recognizing the diversity of country and business contexts, but specific enough to have practical utility. Members of the

Council expressed strong support for such guiding principles and also invited the Special Representative to present options and recommendations to the Council regarding possible successor initiatives to his mandate.

7. All activities of the Special Representative during the final year of his mandate will be focused on these two objectives. He will engage extensively with Member States and other stakeholders. Three consultations are envisaged with Member States, and he is convening separate consultations with business and with civil society on key issues for possible inclusion in the guiding principles. Outreach in particular to national human rights institutions is also envisaged through the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights and its working group on business and human rights. Later in 2010, he plans to post a discussion draft of the guiding principles on his online consultation forum at www.srsgconsultation.org for comments.

B. The State duty to protect

8. Concerning the State duty to protect, the Special Representative notes that most States have adopted measures and established institutions relevant to business and human rights, in such areas as labour standards, workplace non-discrimination, health and safety and consumer protection. States have been slower, however in addressing the more systemic challenge of fostering rights-respecting corporate cultures and practices.

9. In his 2010 report to the Human Rights Council, the Special Representative identified a number of relevant policy developments from all parts of the world. They included guidance for companies via national corporate social responsibility policies, listing and reporting requirements, directors' duties and provisions specifically recognizing a company's "corporate culture" in assessing legal liability. The examples were relatively few in number, however, and even fewer companies explicitly specified human rights in their coverage. The report suggested ways in which State practice could be improved.

10. The Special Representative highlighted that, in protecting against business-related abuse, it was important for States to explore the opportunities to promote the respect of business for rights when they did business with business, whether as owners, investors, insurers, procurers or simply promoters. In particular, he pointed out that the closer an entity was to the State or the more it relied on statutory authority or taxpayer support, the stronger was the State's policy rationale for ensuring that the entity promoted respect for human rights. That would include, for example, State-owned enterprises and the role that export credit agencies and official investment insurance or guarantee agencies could play in incentivizing their clients to respect human rights.

11. There has been recent consideration of this issue at the national and multilateral levels. The Special Representative addressed the Organization for Economic Cooperation and Development (OECD) Export Credits Group, as part of its review of its common approaches. Export credit agencies potentially run two risks in relation to human rights. The first is the risk that a client's business activities or relationships might contribute to human rights abuse abroad, with the moral, reputational, political and, in some cases, legal implications this entails for

the export credit agency itself. The second is the financial risk to the project that may result from its adverse impact on the human rights of individuals and communities, which in turn could affect the export credit agency's own exposure. These risks are inextricably linked. Despite recent encouraging developments, in the case of many, if not most, export credit agencies, these risks are currently unknown and unmeasured.

12. One reason that is frequently invoked to explain export credit agencies' lack of consideration of human rights impacts is that export credit agencies are only a small part of the equation, that there are other financial actors providing greater support or that they are only one player in larger syndicates. The Special Representative has said repeatedly, however, that there is no single silver bullet solution to business and human rights challenges; there are only many small ones. If all players that considered themselves to be just one part of the solution were to do nothing, then nothing would ever change. Fortunately, many are doing their part. Export credit agencies can also do the same, particularly by coming together in multilateral arenas to raise common standards and ensure a level playing field.

13. The business and human rights agenda addresses business-related human rights risks to individuals and communities, as well as stakeholder-driven financial, operational and reputational risks to business itself. The appropriate response by export credit agencies to managing both sets of risk is to require human rights due diligence, of themselves and, wherever their access allows, of project sponsors. The Special Representative recognizes that not all export credit agencies, either at the national or multilateral level, are equipped to conduct such due diligence and that some capacity-building will be required. He thus encourages export credit agencies to consider what tools may be most suitable to assist them in carrying out human rights due diligence, as well as which activities may help to develop their knowledge base and competency in this area. He hopes that the protect, respect and remedy framework will be of some assistance in designing such measures and looks forward to further consulting with export credit agencies and related stakeholders on this issue.

14. The Special Representative is also proceeding with exploring markers for responsible contracting with respect to human rights in the context of agreements between foreign investors and host Governments. The markers would aim at helping both States and investors consider the potential human rights impacts of certain contractual arrangements in long-term investment contracts. The Special Representative is continuing to consult with State representatives and investors, as well as with other stakeholders, on the possibility of providing such markers.

C. The corporate responsibility to respect

15. With regard to the corporate responsibility to respect human rights, the Special Representative, in his report to the Human Rights Council, further elaborated the due diligence process whereby companies could know and show that they respected rights. The Special Representative recognized that the complexity of tools and processes companies employed would necessarily vary with the size of firms and their operational circumstances. This approach had been well received, and some companies were already adopting it, but the report also identified two types of risk that had not yet received the attention they demanded.

16. First, research suggests that companies are not adequately monetizing and aggregating the costs of conflicts with communities in which they operate, which typically involve environmental and human rights concerns. Such stakeholder-related risks include revenue losses resulting from delays and disruptions; higher costs of financing, insurance and security; and possible project cancellation. They are particularly pronounced in the extractive sector and where companies operate in difficult environments. In the case of the major international oil companies, it is estimated that non-technical risks now account for nearly half of all the risks these firms face, while stakeholder-related risks constitute the largest single category of non-technical risks. One global company may have lost $6.5 billion over a two-year period from such sources, amounting to a double-digit percentage of its annual profit. This is a lose-lose situation, one that harms human rights and the company itself. On both grounds, it calls for better internal control and oversight systems.

17. The same is true for the risk that such companies may be implicated in human rights-related international crimes or other egregious abuses, typically through the actions of associated third parties. Prudence would suggest that they should manage this risk as a legal compliance issue, even if the borders of legal liability are still somewhat fluid.

D. Access to remedy

18. On the subject of remedy, State-based judicial and non-judicial mechanisms should form the foundation of a system of remedy for corporate-related human rights abuse. Company-level grievance mechanisms can provide early-stage recourse and possible resolution. Collaborative initiatives can supplement them.

19. Reality falls far short of a comprehensive and inclusive system of remedy, however. The Special Representative has highlighted that the current patchwork of judicial and non-judicial remedial mechanisms available with regard to company impacts on human rights is both incomplete and flawed (see A/HRC/8/5, para. 87). A variety of interventions will be required to address these deficits and enhance both the quantity and quality of remedial options available.

20. In his 2009 report to the Human Rights Council, the Special Representative noted that various stakeholders had suggested the need for a new international institution to improve access to non-judicial remedy. The vision for such a facility has varied, and has included a clearing house for other remedial mechanisms, a capacity-building entity to help disputants use other mechanisms effectively, an expert body to analyse dispute resolution processes and enable more systematic learning, a forum for the actual mediation and/or arbitration of disputes between companies and their stakeholders in society or a combination of two or more of these roles. The Special Representative noted some of the challenges any new forum or facility for mediation or arbitration would have to meet in practice in order to be viable (see A/HRC/11/13, paras. 109-113).

21. The Special Representative is continuing his exploration of these ideas through consultations with a broad range of individuals from different stakeholder groups on different continents. Feedback so far suggests that there may indeed be interest in having greater capacity at the international level to support and facilitate mediation of disputes in this arena. Indeed, recent decisions by some regional development banks to add mediation and conciliation options to their remedy architecture,

alongside existing compliance functions, reflect this same dynamic. Discussions continue on the question of what features any new facility would need to have in order to be viewed by different stakeholder groups as something they would trust and use. Early responses confirm that such a facility would need to have a strongly networked structure, enabling ease of access through one or more focal points, and to facilitate locally embedded processes that are culturally appropriate to the location where the disputes occur. The Special Representative will report further on his findings in early 2011.

III. Extraterritoriality

22. One of the central demands of human rights advocacy groups is for the more extensive exercise of extraterritorial jurisdiction by countries in which multinational corporations are domiciled. Business and many States remain opposed to this practice. In his 2010 report to the Human Rights Council, the Special Representative highlighted that extraterritorial jurisdiction in the business and human rights field, as in other domains, was a complex matter. Nevertheless, he has found that, in debates about this issue, a critical distinction between two very different forms of extraterritoriality is usually obscured, which contributes to the debate's polarization. The first is domestic measures that have extraterritorial implications, for example requiring parent companies to report on the company's overall human rights policy and impacts, including those of its overseas subsidiaries. Such measures rely on territory as the jurisdictional basis, even though they may have extraterritorial implications, and they can encourage better behaviour by companies abroad as well as at home. The second is the exercise by States of jurisdiction directly in relation to actors or activities overseas. An example would be legal regimes governing child sex tourism, which rely on the perpetrator's nationality no matter where the offence occurs.

23. To facilitate a more nuanced discussion of extraterritoriality in the business and human rights context, the Special Representative has constructed a heuristic "extraterritoriality matrix" with two rows and three columns. Its two rows represent: (a) domestic measures with extraterritorial implications; and (b) direct extraterritorial jurisdiction over actors or activities abroad, and its three columns represent: (c) public policies relating to companies (such as corporate social responsibility and public procurement policies, export credit agency criteria or consular support); (d) regulation (through corporate law, for instance); and (e) enforcement actions (adjudicating alleged breaches and enforcing judicial and executive decisions). The combination of these rows and columns yields six types of "extraterritorial" forms, each in turn offering a range of options, not all of which are equally likely to trigger objections from other States, particularly when driven by international consensus.

24. There is an increasing recognition of the need to "unpack" the concept of extraterritoriality in the business and human rights sphere. For example, the European Commission is producing a study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside of the European Union.[1] The Netherlands commissioned a review of the legal liability of Dutch parent companies for the involvement of their subsidiaries,

[1] For more information, see www.law.ed.ac.uk/euenterpriseslf.

including those operating abroad, in human rights abuses.[2] In addition, the Harvard University Corporate Social Responsibility Initiative recently published a comparative report on how various forms of extraterritorial regulation have been employed in other domains involving corporate actors, including anti-corruption, securities, antitrust, the environment and general civil and criminal jurisdiction, and the corresponding lessons for business and human rights.[3]

25. Various factors may contribute to the perceived and actual reasonableness of the different options available to States in this area. First, and not surprisingly, multilateral measures are likely to be seen as more acceptable than unilateral ones. Multilateral measures may have the added benefit of encouraging efficiency, shared learning and capacity-building for States and levelling the playing field for other stakeholders. Moreover, improved consultation and cooperation among States in relation to their unilateral measures may do much to avoid duplication of standards, as well as promote the acceptability and consistent and effective implementation of such standards.

26. Second, genuine legal, political and cultural differences among States mean that principles-based and outcome-oriented approaches to standards that apply extraterritorially or have extraterritorial implications may be less problematic than prescriptive, rules-based approaches are. They also may make business compliance with different regulatory regimes more feasible.

27. Third, when there is a reasonable degree of international consensus on the wrongfulness of an activity, whether for moral, security, economic or other reasons, this can facilitate steps by States unilaterally and multilaterally to work to eliminate that activity at home and abroad. Such steps may be strengthened when States agree on common standards and enforcement methods, including strategies for resolving competing jurisdictional claims.

28. These factors are evident in other domains that deal with harm caused by private actors, such as anti-corruption. For instance, the United Nations Convention against Corruption was adopted by the General Assembly in 2003 and now has 140 signatories, reflecting broad international agreement about the proscribed behaviour. Its provisions dealing with both the supply and demand sides of corruption take into account legitimate differences among States and entail both elements of direct extraterritorial jurisdiction and domestic measures with extraterritorial implications. Moreover, the Convention includes provisions on international cooperation and technical assistance, including regarding the detection and enforcement capabilities of States parties.

29. Multilateral anti-corruption regimes emerged in part because of increasingly globalized threats to core State interests resulting from governance gaps at the domestic and international levels in dealing with corruption. Similar concerns have motivated international coordination in other domains, such as antitrust, the environment and securities regulation, to prevent and address wrongs by private actors at home and abroad. Yet even with some comparable motivations in place, e.g., in the area of international crimes, there has not been equivalent movement in the business and human rights realm.

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[2] Available from https://openaccess.leidenuniv.nl.

[3] Available from www.hks.harvard.edu/m-rcbg/CSRI.

30. The status quo does no favours for victims of corporate-related human rights abuse, nor for host Governments that may lack the capacity for dealing with the consequences, companies that may face operational disruptions or find themselves in litigation for a decade or more or home countries, whose own reputations are on the line.

31. The Special Representative will continue to consult about the various options available to States in this area, both in their domestic spheres and by working together, in order to distinguish what is truly problematic from what is permissible and would strengthen business respect for human rights at home and abroad.

IV. The corporate responsibility to respect human rights in supply chains

32. The scope of a business enterprise's responsibility for human rights abuses taking place in its supply chain has been, and remains, one of the most challenging and contentious issues in the area of business and human rights. In June 2010, the Special Representative was requested to submit a discussion paper to the tenth OECD round table on corporate responsibility for the application of the principle of corporate responsibility to respect human rights to supply chain challenges. It focused on enterprises that purchase goods and services from suppliers because, while suppliers have the same responsibility to respect as any other business entity, enterprises also have a responsibility to respect human rights in their own activities and through their relationships with other parties, including entities in their supply chains.

33. The present section is based on the analysis contained in the discussion paper. It provides one form of a decision logic for companies in dealing with supply chains. In doing so, it aims to help clarify the options for companies in this area and to facilitate discussion. The Special Representative, as with many of his other ongoing areas of work, thus looks forward to further consultation on ways that this decision logic may be refined and improved. Moreover, the Special Representative is continuing to explore the options for companies in relation to other aspects of their value chains beyond suppliers, such as the role of financial institutions vis-à-vis their clients.

34. The appropriate response by an enterprise to the risk of contributing to human rights abuse through its supply chain is for the enterprise to conduct due diligence on its supply chain relationships in order to identify actual and potential adverse impacts, and for it to prevent or mitigate both risks and impacts where they arise.[4] If human rights abuses in the supply chain are identified, the enterprise should assess the following:

(a) Whether the enterprise is implicated in the abuse solely by the link to the goods or services it procures (e.g., the product is produced, without contribution from the enterprise, by bonded or child labour; or an enterprise's external security provider commits human rights violations in protecting company facilities);

[4] For the Special Representative's most recent discussion of the components of ongoing human rights due diligence, see A/HRC/14/27, paras. 79-86.

(b) Whether the enterprise is also contributing to the abuse through its own actions and omissions (e.g., the buyer demands significant last-minute changes in product specifications without adjusting the price or delivery dates, contributing to labour standard violations by a supplier in a low-margin business).

35. In the event that the enterprise is contributing to the abuse through its own actions or omissions, the responsibility to respect requires that the enterprise take appropriate steps to address those contributions.

36. If the business enterprise is not contributing to the abuse through its own actions or omissions, but is implicated by its link to the abuse through the product or services it procures, the most common approaches to date have been to rely on contractual provisions or to set thresholds on the level of trade below which an enterprise's responsibilities would end. Nevertheless, both of these responses have limitations:

(a) Enterprises should indeed have in place measures, such as contract clauses, to require and/or incentivize supply chain entities to respect human rights. This can be a useful step towards preventing or mitigating adverse impacts in the supply chain; however, it is not sufficient to meet the responsibilities of the enterprises, absent reasonable evidence that the supply chain entities are both willing and capable of meeting the requirements. Moreover, enforcing contractual requirements beyond the first tier of suppliers can pose additional challenges, as discussed below;

(b) The suggestion that numerical thresholds can be used to determine when an enterprise's indirect responsibility for human rights harm should require it to take action, such that a company sourcing less than x per cent of its materials from a supplier or representing less than y per cent of the enterprise's business need not do anything with regard to identified abuse by the supply chain entity, has two major pitfalls:

(i) Such thresholds are necessarily arbitrary when applied to very different business sectors and sizes, and are unlikely to be appropriate in all circumstances;

(ii) Such thresholds risk encouraging enterprises to game the system and remain below the threshold that would require them to take responsibility.

37. In sum, reliance on contract clauses is insufficient, while reliance on thresholds is fundamentally problematic. If an enterprise is implicated in human rights abuses solely by the link to products or services it receives, it should take appropriate action to address any impacts identified. What action will be appropriate in turn depends on two key variables:

(a) Whether the enterprise considers the supply chain entity crucial to its business;

(b) Whether the enterprise has leverage over the supply chain entity.

38. The supply chain relationship could be deemed "crucial" to an enterprise if it provides a product or service that is essential to the enterprise's business and for which no reasonable alternative source exists. Leverage is considered to exist when the enterprise has the ability to effect change in the wrongful practices of the supply chain entity. Leverage may reflect one or more of a number of factors, such as:

(a) Whether there is a degree of direct control between the enterprise and the supply chain entity;

(b) The terms of contract between the enterprise and the supply chain entity;

(c) The proportion of business the enterprise represents for the supply chain entity;

(d) The ability of the enterprise to incentivize the supply chain entity to improve its human rights performance, e.g., in terms of future business, reputational advantage and capacity-building assistance;

(e) The reputational benefits for the supply chain entity of working with the enterprise, and the reputational harm of that relationship being withdrawn;

(f) The ability of the enterprise to engage other enterprises that work with the supply chain entity in incentivizing improved human rights performance;

(g) The ability of the enterprise to engage local or central government in requiring improved human rights performance by the supply chain entity, e.g., through the implementation of regulations, monitoring and sanctions.

39. Based on the definitions above, the enterprise should assess whether the relationship is crucial and whether it possesses leverage. The combination of these variables will yield different conclusions as to what action should be taken.

Situation A

40. If the supply chain entity is crucial and the enterprise possesses leverage, the priority should be to use that leverage to mitigate the abuse. If concerted efforts at mitigation prove unsuccessful, the logical conclusion is that the leverage is in fact not what was imagined, and the consequences for decision-making would be those described in situation B below.

Situation B

41. If the supply chain entity is crucial to the enterprise but the enterprise lacks leverage to mitigate the abuse, its priority should be to seek ways to increase its leverage to enable mitigation. This could take a number of forms, for example:

(a) Offering capacity-building support to the entity to help it address the problems;

(b) Working collaboratively with other enterprises that have relationships with the entity to incentivize improvements;

(c) Working with other enterprises on a broader regional or sectoral basis to incentivize improvements;

(d) Working with local or central government to the same end.

42. If these efforts prove unsuccessful, the enterprise will either need to take steps to end the relationship or it will need to be able to demonstrate that it has done everything reasonably possible to mitigate the abuses, and needs to be prepared to face any consequences for its decision to maintain the relationship.

Situation C

43. If the supply chain entity is not crucial to the enterprise but the enterprise does have leverage, the enterprise's continued involvement would require it first to try to use its leverage to mitigate the abuse. If that proves unsuccessful, it can reasonably be expected to take steps towards ending the relationship.

Situation D

44. If a supply chain entity is abusing human rights and is neither crucial to the enterprise nor subject to its leverage, the logical conclusion would be for the enterprise to take steps to end the relationship in order to meet its own responsibility to respect human rights.

45. In complex or contentious situations, enterprises and supply chain entities would be well advised to seek the insights, advice and even validation of key external stakeholders regarding their options and ultimate choice of action.

46. The decision logic described above can be illustrated in a simple four-cell matrix:

	Have leverage	Lack leverage
Crucial source/partner	**A.** ➢ Mitigate the abuse ➢ If unsuccessful,	**B.** ➢ Seek to increase leverage ➢ If successful, mitigate abuse ➢ If unsuccessful, take steps to end the relationship, or be able to demonstrate efforts made to mitigate abuse, recognizing possible consequences of remaining
Non-crucial source/partner	**C.** ➢ Try to mitigate the abuse ➢ If unsuccessful, take steps to end the relationship	**D.** ➢ Take steps to end the relationship

47. The logic described in this matrix can be applied to existing supply chain relationships. As for the decision whether to enter into a new supply chain relationship with an entity for which there is evidence of existing human rights

abuses, an enterprise should first assess whether it is likely to be able to mitigate those abuses through its relationship:

(a) If the enterprise assesses that it can, it may enter the relationship if it then pursues options for mitigating the abuses, as illustrated by situations A or B in the matrix;

(b) If the enterprise assesses that it cannot mitigate abuses identified in that entity, it should not enter the relationship.

48. An enterprise necessarily knows all of the entities in the first tier of its supply chain. If any of those entities is found to be responsible for human rights abuses, whether directly or indirectly (for instance, in the case of an agent or licensee), the enterprise can apply the logic illustrated by the decision matrix.

49. Beyond the first tier, it can become more difficult for an enterprise to know all the entities in its supply chain and whether any are abusing human rights. With regard to those additional tiers, not knowing about abuses is not a sufficient response by itself to allegations of either legal or non-legal complicity if the enterprise should reasonably have known about them through due diligence. Therefore, enterprises should:

(a) Use due diligence to identify general areas of risk of serious human rights abuse related to supply chain relationships that are associated with a particular locale or region or with particular products or materials and their known sources, drawing on appropriate Government, expert and/or stakeholder advice;

(b) Take action to mitigate any such risks, including by seeking to ensure that intermediary entities in the supply chain are themselves practising due diligence and maintaining appropriate standards;

(c) If they identify specific supply chain entities that are abusing human rights, in line with the decision matrix above, take appropriate efforts to mitigate the abuse (directly or through intermediaries in the relationship chain); if mitigation is impossible, either take steps to end the relationship (whether directly or via intermediaries) or be able to demonstrate efforts made to mitigate the abuse, recognizing the possible consequences of maintaining the relationship.

V. Promotion of the protect, respect and remedy framework

50. In order to promote and disseminate the framework, the Special Representative has worked closely with several international entities that are revising their own business and human rights provisions, encouraging alignment with the protect, respect and remedy framework. They include OECD; the International Organization for Standardization; the International Finance Corporation; the Global Compact, both through its Human Rights Working Group and by participation in the Global Compact Leaders Summit in June 2010; and the European Union.

51. Several other forums have been briefed on the framework, including the United Nations treaty bodies, other special procedures, national human rights institutions, the United Nations Permanent Forum on Indigenous Issues and the Inter-American Commission on Human Rights. Discussions are planned with representatives of the Association of Southeast Asian Nations (ASEAN)

Intergovernmental Commission on Human Rights and the African Union Commission on International Law.

52. To facilitate additional stakeholder input and engagement on the corporate responsibility to respect human rights, the Special Representative in December 2009 launched an online consultation (see www.srsgconsultation.org), which has attracted more than 3,600 unique visitors from 120 countries. The Special Representative plans to post the draft guiding principles on the implementation of the framework on this site later in the year for comments.

VI. Conclusion

53. The work of the Special Representative has been assessed positively in the world's leading financial press, individual Governments and international institutions are drawing on it, companies have adopted some of its central features and civil society organizations are using it in their analytical and advocacy work. He is immensely grateful to everyone who has supported and participated in the mandate's comprehensive and inclusive process, and for the progress achieved to date. Principled pragmatism has helped turn a previously divisive debate into constructive dialogues and practical paths of action. The Special Representative hopes that, by the time his mandate ends, the foundational principles will be in place for adapting the human rights regime to provide more effective protection of individuals and communities against corporate-related human rights harm.

United Nations A/65/311

General Assembly

Distr.: General
19 August 2010

Original: English

Sixty-fifth session
Item 51 of the provisional agenda*
United Nations Relief and Works Agency for Palestine Refugees in the Near East

Palestine refugees' properties and their revenues

Report of the Secretary-General

Summary

On 10 May 2010, the Secretary-General sent notes verbales to Israel and all other Member States, drawing their attention to the relevant provisions of General Assembly resolutions 64/87 to 64/90, and requesting information by 8 July 2010 concerning any action taken or envisaged in relation to their implementation. Replies dated 8 July and 28 June 2010 were received from Denmark and Israel, responding among other things to the request contained in paragraph 4 of resolution 64/90. The full text of the replies is reproduced in the present report. No information has been received from other Member States regarding resolution 64/90.

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1. The present report is submitted in pursuance of paragraph 6 of General Assembly resolution 64/90, on Palestine refugees' properties and their revenues.

2. On 10 May 2010, the Secretary-General drew the attention of the Permanent Representative of Israel to the United Nations to resolutions 64/87 to 64/90, all of 10 December 2009, with the request that the Permanent Representative inform him by 8 July 2010 of any steps her Government had taken or envisaged taking in implementation of the relevant provisions of the resolutions.

3. Also on 10 May 2010, the Secretary-General sent a note verbale to all other Member States, drawing their attention to the relevant provisions of resolutions 64/87 to 64/90, and requesting information by 8 July 2010 on any actions taken or envisaged in relation to their implementation.

4. A reply dated 8 July 2010 was received from Denmark, responding among other things to the request contained in paragraph 4 of resolution 64/90. The full text of the reply reads as follows:

[Original: English]

> With regard to resolutions 64/87, 64/88 and 64/89, paragraph 23, Denmark has this year supported UNRWA with a core contribution of DKr 70 million, as part of its continuous support to the Agency. The confirmation of an additional DKr 10 million contribution for the implementation of education activities in Gaza is yet another expression of support to the development mission of the Agency and represents a concrete investment in the future of Palestine refugees. This contribution comes on the backdrop of Denmark's work in the UNRWA Advisory Commission to sustain the Agency's management reform.
>
> With specific regard to resolution 64/89, paragraph 22, regarding special allocations for grants and scholarships for higher education to Palestine refugees, Denmark has in 2009 supported the higher education of three Palestinian individuals, two females and one male, through the Danida Fellowship Centre. This was an increase compared to 2007 and 2008, when only one individual was supported through the Danida Fellowship Centre.
>
> Regarding resolution 64/90, which urges States to provide the Secretary-General with any pertinent information in their possession concerning Arab property, assets and property rights in Israel, Denmark contributes through the continuous reporting on the overall political and developmental situation in the Occupied Palestinian Territories. Through support to human rights organizations engaged in the field, Denmark furthermore contributes to information and monitoring of the issue.

5. A reply dated 28 June 2010 was received from Israel, responding among other things to the request contained in paragraph 4 of resolution 64/90. The full text of the reply reads as follows:

[Original: English]

> While Israel voted against these resolutions [64/87 to 64/90] in light of their politicization and one-sided perspective, as it has done on similar resolutions in the past, the Permanent Mission wishes to reiterate Israel's support for UNRWA's humanitarian activities. In this respect, Israel reaffirms its intention to continue facilitating UNRWA's extension of humanitarian services to its beneficiaries in the field.
>
> Despite an ongoing and acute threat to its security, Israel has gone to great lengths fostering conditions for Palestinian economic development and cooperation, including liberalization of the system by which civilian goods enter Gaza, as well as engaging in political dialogue with the Palestinian Authority and assisting in extending humanitarian assistance to Palestinian beneficiaries.
>
> Over the last year, Israel has substantially eased the security-related restrictions in the West Bank. Since 2008, the number of key checkpoints has been reduced from 41 to 14. Since April 2008, 357 obstacles (earth mounds, roadblocks) have been removed. In January 2010, 10 roadblocks were removed on Route 60, the major north-south artery in the West Bank. Generally, movement from north to south in the West Bank is now smooth, with only a few checkpoints along the way, operated as normally open. These and other positive developments have resulted in an economic growth rate of 8 per cent in the West Bank in 2009, accompanied by a growth in foreign investment of 600 per cent since 2008.
>
> Despite attacks by Hamas, Israel continues to facilitate the entry of large quantities of humanitarian supplies into Gaza and maintains an ongoing humanitarian corridor for the transfer of perishable and staple food items to Gaza. In 2009, 738,576 tons (30,576 trucks) of humanitarian commodities were transferred to the Gaza Strip. In January and February 2010, 92,138.1 tons (4,056 trucks) were transferred. In 2009, 22,849 Palestinians exited the Strip, among them 10,544 patients and their companions, exiting for medical treatment in Israel. In 2009, 21,200 international organization staff members entered the Gaza Strip. In addition, numerous infrastructural projects have been advanced, including in the fields of housing, classrooms, sewage treatment plants and medical facilities. In this regard, in anticipation of winter, 3,607 tons of glass (103 truckloads) were transferred to Gaza in late 2009. Also, in the first quarter of 2010, 23 tons of iron and 25 tons of cement were transferred to the Gaza Strip from Israel, with an additional 39 tons of building material in May 2010. In June 2010 the Government of Israel has reviewed its policy towards Gaza and decided to liberalize the system by which civilian goods enter Gaza, including expansion of the inflow of materials for civilian projects that are under international supervision.
>
> Notwithstanding the above, terrorist organizations in the West Bank and Hamas-controlled Gaza Strip remain active in planning, preparing and attempting to execute terrorist attacks.
>
> In 2009, 646 terrorist attacks emanated from or were carried out in the West Bank, leading to five deaths (three victims were shot and two were attacked and stabbed to death). The first half of 2010 witnessed an alarming escalation in terrorist activity against Israeli targets in the West Bank and the Jerusalem area. In the first two months of 2010, 87 terrorist attacks were carried out in the West Bank. In February 2010, an Israeli citizen was stabbed to death in one of these attacks. In March 2010, 89 attacks were recorded in the West Bank and Jerusalem: three explosive devices, five attacks by gunfire, two stone-throwing attacks, and 79 Molotov cocktails. In June 2010 an Israeli

citizen was killed and three others were wounded when Palestinian terrorists opened fire on their vehicle.

In 2009, 699 terrorist attacks emanated from the Gaza Strip, killing nine Israeli citizens. Between January and March 2010, over 80 terrorist attacks from Gaza were recorded, including rocket and mortar fire, placement of improvised explosive devices and small-arms fire against Israel. Three victims were murdered in these attacks — two Israeli soldiers and a Thai worker. The rocket and mortar attacks against Israel in the past year are a continuation of a nine-year-long terrorist campaign in which many thousands of such projectiles have been launched at Israeli civilian centres from Gaza. Troublingly, none of the above is mentioned in any of the aforementioned resolutions.

Notwithstanding its support for UNRWA's humanitarian activities, Israel remains concerned by the political motivation of the aforesaid resolutions, and is disturbed by the fact that they present a one-sided view which fails to reflect the reality on the ground. In this respect, public statements of UNRWA officials which are clearly political and one-sided in tone are deeply troubling. As a professional, humanitarian body, UNRWA must be vigilant in avoiding references to controversial matters of a political nature.

Israel supports a consolidation of UNRWA resolutions, and a removal of all extraneous political language. Moreover, Israel urges the Secretary-General and UNRWA to consider, together with the concerned parties, ways in which the United Nations can enhance the manner in which it advances the welfare of the Palestinian people.

In this respect, Israel favours an application in the Palestinian context of the standard principles guiding the United Nations with respect to treatment of refugees. Specifically, UNRWA's mandate should be such that entitlement to its services will be defined in a manner consistent with the standard United Nations policy on refugees. Furthermore, UNRWA's mandate should include the active promotion in the Palestinian context of the broadly applied United Nations goals of resettlement and local integration of refugees.

The annual General Assembly resolutions on UNRWA represent a politically motivated departure from the standard United Nations policy on refugee matters. This politicization of a strictly humanitarian issue has exacerbated the situation of the Palestinian refugees by preventing practical solutions to their needs, such as have been successfully implemented with respect to numerous groups of refugees around the world. Israel attaches importance to promoting such changes in these resolutions as will ensure that the mandate of UNRWA is consistent with the general principles guiding United Nations policy on refugees.

6. No information has been received from other Member States with regard to the request contained in paragraph 4 of General Assembly resolution 64/90.

United Nations A/65/312

General Assembly

Distr.: General
19 August 2010

Original: English

Sixty-fifth session
Item 67 (a) of the provisional agenda*
Elimination of racism, racial discrimination, xenophobia and related intolerance

Financial situation of the Committee on the Elimination of Racial Discrimination

Report of the Secretary-General

1. Pursuant to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX), annex), States parties shall be responsible for the expenses of the members of the Committee on the Elimination of Racial Discrimination while they are in performance of Committee duties.

2. In its resolution 47/111, the General Assembly welcomed the decision taken at the Fourteenth Meeting of States Parties to the Convention in January 1992 to amend article 8 of the Convention and requested the Secretary-General to take the appropriate measures to provide for the financing of the Committee from the regular budget of the United Nations, beginning with the budget for the biennium 1994-1995, and to take the necessary measures to ensure that the Committee met as scheduled until the amendment entered into force.

3. Acting in his capacity as depositary, the Secretary-General communicated the amendment to all States parties on 1 March 1993 (see annex I). It will be recalled that, at their Fourteenth Meeting, the States parties had decided that the amendment would enter into force when accepted by a two-thirds majority of States parties that had so notified the Secretary-General as depositary. As at 30 June 2010, notifications of acceptance had been received from 43 States parties to the Convention.

4. In section II of its resolution 63/243, the General Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment; requested the Secretary-General to continue to ensure adequate financial arrangements and to provide the necessary support, including an

* A/65/150.

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adequate level of Secretariat assistance, in order to ensure the functioning of the Committee and to enable it to cope with its increasing amount of work; and also requested him to invite those States parties that were in arrears to pay the amounts in arrears, and to report thereon to the Assembly at its sixty-fifth session.

5. Financing for the annual sessions of the Committee in 2009 and 2010 was provided from the regular budget, in accordance with General Assembly resolution 47/111. Consequently, no State party assessments were made in those two years. However, a number of States parties are still in arrears as a result of the non-payment of previous assessments. As at 30 June 2010, the total arrears outstanding amounted to $121,216.13 (see annex II).

Annex I

International Convention on the Elimination of All Forms of Racial Discrimination: approval by the General Assembly of the proposed amendment to article 8

1. The Secretary-General of the United Nations, acting in his capacity as depositary, and with reference to depositary notification C.N.285.1991.TREATIES-4 of 20 December 1991, communicates the following.

2. It will be recalled that the States parties to the above-mentioned Convention, at the 22nd meeting of the Fourteenth Meeting of the States Parties, held on 15 January 1992, decided as follows:

> 1. To replace paragraph 6 of article 8 of the Convention with the paragraph "The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention";
>
> 2. To add a new paragraph, as article 8, paragraph 7, as follows:
>
> "The members of the Committee established under the present Convention shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide";
>
> ...
>
> 4. That the amendment shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States parties which shall have so notified the Secretary-General as depositary.

3. The General Assembly endorsed the amendment at its forty-seventh session (resolution 47/111). In accordance with the above-quoted paragraph 4, it will enter into force when it is accepted by the required number of States parties which shall have so notified the Secretary-General.

Annex II

Status of contributions to the Committee on the Elimination of Racial Discrimination as at 30 June 2010

(United States dollars)

State party	*Contributions payable as at 31 January 1993*	*1993 assessments*	*Total collections from 1993 to 2010 for 1993 and prior years*[a]	*Contributions payable as at 30 June 2010*
Afghanistan	1 348.00	877.00	—	2 225.00
Algeria	—	1 177.00	1 177.00	—
Antigua and Barbuda	—	877.00	877.00	—
Argentina	690.00	1 941.00	2 631.00	—
Australia	—	3 811.00	3 811.00	—
Austria	—	2 341.00	2 341.00	—
Bahamas	—	896.00	896.00	—
Bahrain	—	920.00	920.00	—
Bangladesh	876.00	877.00	1 753.00	—
Barbados	362.00	877.00	1 239.00	—
Belarus	1 426.00	1 869.00	3 295.00	
Belgium	—	2 900.00	2 900.00	—
Bolivia (Plurinational State of)	362.00	877.00	—	1 239.00
Botswana	—	877.00	877.00	—
Brazil	1 792.00	4 056.00	5 848.00	—
Bulgaria	431.00	1 104.00	1 535.00	—
Burkina Faso	6 629.83	877.00	7 506.83	
Burundi	8 899.00	877.00	4 322.00	5 454.00
Cambodia	2 244.00	877.00	3 121.00	
Cameroon	942.04	877.00	1819.04	
Canada		7 004.00	7 004.00	—
Cape Verde	7 162.00	877.00	—	8 039.00
Central African Republic	7 783.89	877.00	—	8 660.89
Chad	211.40	877.00	—	1 088.40
Chile	1 006.00	1 015.00	2 021.00	—
China	—	2 367.00	2 367.00	—
Colombia	-0.09	1 109.00	1 109.00	
Congo	2 597.00	877.00	3 474.00	
Costa Rica	3 909.86	872.00	4 867.88	—
Côte d'Ivoire	1 937.00	896.00	2 833.00	—
Cuba	—	1 035.00	1 035.00	—
Cyprus	—	896.00	896.00	—
Czechoslovakia[b]	-502.00		-502.00	
Democratic Republic of the Congo	-45.00	877.00	—	832.00

State party	*Contributions payable as at 31 January 1993*	*1993 assessments*	*Total collections from 1993 to 2010 for 1993 and prior years*[a]	*Contributions payable as at 30 June 2010*
Denmark	—	2 122.00	2 122.00	—
Dominican Republic	3 523.00	892.00	—	4 415.00
Ecuador	913.00	916.00	1 829.00	—
Egypt	—	994.00	994.00	—
El Salvador	7 162.00	877.00	—	8 039.00
Estonia	—	1 205.00	1 205.00	
Ethiopia	-514.00	877.00	363.00	—
Fiji	362.00	877.00	1 239.00	—
Finland	—	2 007.00	2 007.00	—
France	—	12 590.00	12 590.00	—
Gabon	892.00	892.00	—	1 784.00
Gambia	7 831.00	877.00	—	8 708.00
Germany	—	18 294.00	18 294.00	—
Ghana	—	877.00	877.00	—
Greece	—	1 524.00	1 524.00	—
Guatemala	1 389.20	896.00	2 285.20	—
Guinea	903.80	877.00	—	1 780.80
Guyana	—	877.00	877.00	—
Haiti	1 750.00	877.00	—	2 627.00
Holy See	—	877.00	877.00	—
Hungary	—	1 199.00	1 199.00	—
Iceland	—	916.00	916.00	—
India	—	1 562.00	1 562.00	—
Iran (Islamic Republic of)	—	2 411.00	2 411.00	—
Iraq	-248.92	1 117.00	868.08	—
Israel	1 949.00	1 320.00	3 269.00	—
Italy	0.00	9 456.00	9 456.00	
Jamaica	362.00	877.00	1 239.00	—
Jordan	—	877.00	877.00	—
Kuwait	501.00	1 332.00	1 833.00	—
Lao People's Democratic Republic	—	877.00	877.00	—
Latvia	—	1 322.00	1 322.00	—
Lebanon	4 822.00	877.00	5 699.00	—
Lesotho	1 348.00	877.00	2 225.00	—
Liberia	7 139.00	877.00	—	8 016.00
Libyan Arab Jamahiriya	2 053.00	1 313.00	3 366.00	—
Luxembourg	—	975.00	975.00	—
Madagascar	901.87	877.00	1 889.82	
Maldives	—	877.00	877.00	—

State party	Contributions payable as at 31 January 1993	1993 assessments	Total collections from 1993 to 2010 for 1993 and prior years[a]	Contributions payable as at 30 June 2010
Mali	9 850.00	877.00	—	10 727.00
Malta	—	877.00	877.00	—
Mauritania	2 285.00	877.00	—	3 162.00
Mauritius	—	877.00	877.00	—
Mexico	—	2 567.00	2 567.00	—
Mongolia	876.00	877.00	1 753.00	—
Morocco	—	912.00	912.00	—
Mozambique	5 097.00	877.00	5 974.00	—
Nepal	876.00	877.00	1 753.00	—
Netherlands	—	3 750.00	3 750.00	—
New Zealand	—	1 331.00	1 331.00	—
Nicaragua	2 244.00	877.00	4 000.00	
Niger	2 750.00	877.00	—	3 627.00
Nigeria	1 899.00	1 251.00	3 150.00	—
Norway	-15.00	1 941.00	1 926.00	—
Pakistan	0.01	975.00	975.01	—
Panama	1 122.00	896.00	2 018.00	—
Papua New Guinea	362.00	877.00	1 239.00	
Peru	2 469.00	975.00	3 444.00	—
Philippines	-211.11	986.00	774.89	—
Poland	610.00	1 744.00	2 354.00	—
Portugal	—	1 260.00	1 260.00	—
Qatar	393.00	955.00	1 348.00	—
Republic of Korea	—	2 425.00	2 425.00	—
Romania	1 819.00	1 184.00	3 003.00	—
Russian Federation	18 149.00	12 750.00	30 899.00	—
Rwanda	876.00	877.00	1 753.00	
Saint Lucia	—	877.00	877.00	—
Saint Vincent and the Grenadines	6 637.00	877.00	—	7 514.00
Senegal	-816.19	877.00	69.00	
Serbia	1 435.00	1 122.00		2557.00
Seychelles	876.00	877.00	666.14	1 087.00
Sierra Leone	8 659.00	877.00	—	9 536.00
Slovenia	—	1 205.00	1 205.00	—
Solomon Islands	2 244.00	877.00	3 121.00	—
Somalia	7 028.00	877.00	—	7 905.00
Spain	—	4 777.00	4 777.00	—
Sri Lanka	—	877.00	877.00	—
Sudan	3 510.00	877.00	—	4 387.00

State party	*Contributions payable as at 31 January 1993*	*1993 assessments*	*Total collections from 1993 to 2010 for 1993 and prior years*[a]	*Contributions payable as at 30 June 2010*
Suriname	3 084.00	877.00	3 961.00	—
Swaziland	362.00	877.00	1 239.00	—
Sweden	—	3 003.00	3 003.00	—
Syrian Arab Republic	385.00	936.00	1 321.00	—
Togo	1 367.04	877.00	—	2 244.04
Tonga	798.00	877.00	—	1 675.00
Trinidad and Tobago	820.17	955.00	1 775.17	—
Tunisia	—	916.00	916.00	—
Uganda	362.00	877.00	1 239.00	—
Ukraine	3 026.00	4 820.00	7 846.00	—
United Arab Emirates	—	1 280.00	1 280.00	—
United Kingdom of Great Britain and Northern Ireland	—	10 836.00	10 836.00	—
United Republic of Tanzania	1 898.00	877.00	2 775.00	—
Uruguay	385.00	936.00	1 321.00	—
Venezuela (Bolivarian Republic of)	—	1 788.00	2 933.47	—
Viet Nam	2 244.00	877.00	3 121.00	—
Yemen	924.00	877.00	—	1 801.00
Zambia[c]	-2 146.88	877.00	-1 269.88	—
Zimbabwe	993.00	1 093.60	—	2 086.60
Total	**187 190.92**	**223 408.00**	294 169.65	121 216.13[d]

[a] In accordance with records of the Contributions Service as at 30 June 2010. Amounts reflect total collections, including overpayments.

[b] An amount of $502.00, which represents the surplus of the 1991 contribution made by the former Czechoslovakia, has been reimbursed to the Governments of the Czech Republic ($334.00) and the Slovak Republic ($168.00).

[c] An amount of $1,471.28 has been reimbursed to the Government of Zambia.

[d] Excludes credits/overpayment amounts held in suspense account.

United Nations A/65/313

General Assembly

Distr.: General
19 August 2010

Original: English

Sixty-fifth session
Item 74 of the provisional agenda*
Report of the International Criminal Court

Report of the International Criminal Court

Note by the Secretary-General

The report of the International Criminal Court on its activities for 2009/10 is submitted herewith to the General Assembly in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court and paragraph 17 of General Assembly resolution 64/9.

* A/65/150.

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Report of the International Criminal Court to the United Nations for 2009/10

Summary

The present report, covering the period 1 August 2009 to 31 July 2010, is the sixth annual report of the International Criminal Court submitted to the United Nations. It covers the main developments in the activities of the Court and other developments of relevance to the relationship between the Court and the United Nations.

During the reporting period, the Secretary-General of the United Nations, in his capacity as depositary of the Rome Statute of the International Criminal Court, convened the Review Conference of the Rome Statute from 31 May to 11 June 2010 in Kampala. At the Review Conference, States parties reviewed and amended the Rome Statute, conducted a stocktaking of international criminal justice and made significant pledges on a wide range of issues.

The Court is seized of five situations. The situations in Uganda, the Democratic Republic of the Congo and the Central African Republic were each previously referred to the Court by those States, themselves Parties to the Rome Statute. The situation in Darfur, the Sudan was referred by the United Nations Security Council. In each case, the Prosecutor decided that there was a reasonable basis to open investigations. During the reporting period, Pre-Trial Chamber II authorized the Prosecutor to initiate an investigation into the situation in Kenya in relation to crimes against humanity committed between 1 June 2005 and 26 November 2009. Further, the Office of the Prosecutor is conducting preliminary examinations in various situations, including in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea and Palestine.

In respect of the situation in Uganda, there is one ongoing case, *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, which is at the pretrial stage. The four warrants of arrest have been outstanding since July 2005. On 16 September 2009, the Appeals Chamber upheld the decision rendered by Pre-Trial Chamber II on 10 March 2009, which had ruled that the case against the four accused was admissible before the Court.

In respect of the situation in the Democratic Republic of the Congo, there are three ongoing cases, one at the pretrial stage and two at the trial stage. In *The Prosecutor v. Bosco Ntaganda*, the arrest warrant issued by Pre-Trial Chamber I under seal on 22 August 2006 and unsealed on 28 April 2008 remains outstanding.

In *The Prosecutor v. Thomas Lubanga Dyilo* the Court has heard the prosecution case and the defence started the presentation of its evidence on 7 January 2010. On 8 July 2010, however, Trial Chamber I ordered a stay in the proceedings. The prosecution appealed the decision, which is now pending before the Appeals Chamber.

The trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* started on 24 November 2009 before Trial Chamber II with the presentation of prosecution evidence which continued until 16 July 2010. The trial is scheduled to resume on 23 August 2010.

In the situation in the Central African Republic, there is one ongoing case, *The Prosecutor v. Jean-Pierre Bemba Gombo*, now also at the trial stage since 18 September 2009, when the Presidency referred the case to Trial Chamber III. The start of the trial was scheduled for 27 April 2010. On 25 February 2010, however, the defence submitted a challenge to the admissibility of the case, which led to subsequent postponements of the date of commencement of the trial. On 24 June 2010, Trial Chamber III confirmed that the case was admissible. The decision was appealed by the defence. The new date of commencement of the trial is to be set on 30 August.

In respect of the situation in Darfur, there are four ongoing cases, all at the pretrial stage. In *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman* the pending arrest warrants have not been executed. Pre-Trial Chamber I took a decision on 25 May 2010 to inform the members of the United Nations Security Council of the lack of cooperation by the Sudan and transmitted its decision to the Council, through the Secretary-General, in order for the Council to take any action it might deem appropriate (see S/2010/265).

In *The Prosecutor v. Omar Hassan Ahmad Al-Bashir* the prosecution's appeal against the decision of Pre-Trial Chamber I rejecting the additional counts of genocide to the warrant of arrest delivered on 4 March 2009 was successful, and on 3 February 2010 the Appeals Chamber reversed the decision and remanded the matter to the Pre-Trial Chamber to determine anew on the issue. On 12 July 2010, Pre-Trial Chamber I issued a second warrant of arrest with respect to three counts of genocide. Both arrest warrants remain outstanding.

In accordance with Security Council resolution 1593 (2005), the Prosecutor presented his tenth and eleventh reports on the status of the investigation into the situation in Darfur to the Security Council on 4 December 2009 and 11 June 2010 respectively, highlighting the lack of cooperation by the Government of the Sudan, the continuation of the alleged crimes on the ground and the need to execute the outstanding arrest warrants.

In *The Prosecutor v. Bahr Idriss Abu Garda*, Mr. Abu Garda appeared voluntarily on the basis of a summons to appear delivered by Pre-Trial Chamber I on 7 May 2009. The hearing took place from 19 to 30 October 2009 before Pre-Trial Chamber I. On 8 February 2010, Pre-Trial Chamber I declined to confirm the charges against Mr. Abu Garda due to insufficient evidence.

In *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Pre-Trial Chamber I issued a summons to appear under seal on 27 August 2009. The Prosecution alleges that both men participated as co-perpetrators or indirect co-perpetrators to the attack on the Haskanita military group site on 29 September 2007. The summonses to appear were unsealed on 15 June 2010, and on 17 June 2010 Mr. Banda and Mr. Jerbo appeared voluntarily before Pre-Trial Chamber I for an initial appearance. They remain free pending the hearing on the confirmation of charges, which is scheduled to start on 22 November 2010.

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I. Introduction

1. The present report, covering the period 1 August 2009 to 31 July 2010, is the sixth annual report of the International Criminal Court submitted to the United Nations in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court.[1] It covers the main developments in the activities of the Court and other developments of relevance to the relationship between the Court and the United Nations since the fifth report of the Court to the United Nations (A/64/356).

2. The Court was created by an international treaty, the Rome Statute of the International Criminal Court,[2] which was adopted on 17 July 1998 and entered into force on 1 July 2002. During the reporting period, Bangladesh deposited its instrument of ratification, becoming the 111th State to ratify or accede to the Rome Statute. These include 30 African States, 15 Asian States, 17 Eastern European States, 24 States from Latin America and the Caribbean and 25 Western European and other States.

3. The Court is an independent judicial institution, charged with carrying out investigations into and trials of individuals allegedly responsible for the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. The Rome Statute requires that proceedings before the Court are carried out fairly and impartially, with full respect for the rights of the accused. An innovative aspect of the Rome Statute in comparison with previously established international criminal courts or tribunals is that victims may participate in proceedings, even if not called as witnesses.

4. In carrying out its functions, the Court relies on the cooperation of States, international organizations and civil society in accordance with the Rome Statute and international agreements concluded by the Court. Areas where the Court requires cooperation from States include analysis, investigations, the arrest and surrender of accused persons, asset tracking and freezing, victim and witness protection, provisional release, the enforcement of sentences and the execution of the Court's decisions and orders.

5. The Court is independent from, but has close historical, legal and operational ties to, the United Nations. The relationship between the Court and the United Nations is governed by the relevant provisions of the Rome Statute and by the Relationship Agreement and other subsidiary agreements.

II. Review Conference of the Rome Statute

6. The Review Conference of the Rome Statute was held from 31 May to 11 June 2010 in Kampala. Pursuant to article 123, paragraph 1, of the Rome Statute, the Secretary-General of the United Nations, Ban Ki-moon, in his capacity as depositary of the Rome Statute, convened and opened the Conference.

7. The Review Conference adopted the Kampala Declaration (declaration RC/Decl.1) in which States parties reaffirmed their commitment to the Rome Statute

[1] United Nations, *Treaty Series*, vol. 2283, No. 1272.

[2] Ibid., vol. 2187, No. 38544.

and its full implementation, as well as its universality and integrity. States parties decided to celebrate 17 July, the day of the adoption of the Rome Statute in 1998, as the Day of International Criminal Justice.

Pledges

8. The Conference held a pledging ceremony in which 112 pledges from 37 States, including States not parties to the Rome Statute, and regional organizations, were made. These pledges covered, inter alia, financial contributions, support for arrests, agreements to enforce sentences, agreements on privileges and immunities, relocation of witnesses, cooperation with the Court and between States in various forms, complementarity, outreach and the designation of focal points.

Stocktaking of international criminal justice

9. The Conference undertook a stocktaking of international criminal justice, and separate panels of experts and practitioners considered the following topics: the impact of the Rome Statute system on victims and affected communities; peace and justice; complementarity and cooperation. The Conference adopted two resolutions,[3] a declaration on cooperation (declaration RC/Decl.2) and a summary of the discussions on peace and justice (document RC/ST/PJ/1/Rev.1), and took note of the summaries of other topics.[4]

10. A number of senior United Nations officials participated in the discussions to take stock of international criminal justice, including the Under-Secretary-General for Legal Affairs, the Legal Counsel; the United Nations High Commissioner for Human Rights; the Prosecutor of the International Tribunal for the Former Yugoslavia; the Special Representative of the Secretary-General for Children and Armed Conflict; the Registrar of the United Nations International Criminal Tribunal for Rwanda; and the Director of the Democratic Governance Group, Bureau for Development Policy, United Nations Development Programme.

Review of the Rome Statute: crime of aggression

11. The Conference amended the Rome Statute to include a definition of the crime of aggression and the conditions under which the Court could exercise jurisdiction with respect to that crime (see resolution RC/Res.6). The exercise of jurisdiction is subject to a decision to be taken after 1 January 2017 by the same majority of States parties as required for the adoption of an amendment to the Statute.

12. The definition of the crime of aggression adopted by the Conference is based on General Assembly resolution 3314 (XXIX). The Conference agreed to qualify as aggression a crime committed by a political or military leader which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

13. As regards the Court's exercise of jurisdiction, the Conference agreed that a situation in which an act of aggression appeared to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the Charter of the

[3] Resolution RC/Res.1, on complementarity, and resolution RC/Res.2, on the impact of the Rome Statute system on victims and affected communities.

[4] The summaries may be accessed at www.icc-cpi.int.

United Nations, irrespective of whether it involved States parties or States not parties to the Rome Statute.

14. While acknowledging the role of the Security Council in determining the existence of an act of aggression, the Conference agreed to authorize the Prosecutor, in the absence of such a determination, to initiate an investigation *proprio motu* or upon a request from a State party. Such investigation could proceed only with the prior authorization of the Pre-Trial Division of the Court. Furthermore, the Court would not have jurisdiction over a crime of aggression committed on the territory of States not parties to the Statute or by their nationals or with regard to States parties that had declared that they did not accept the Court's jurisdiction over the crime of aggression.

Review of the Rome Statute: article 8

15. By resolution RC/Res.5, adopted on 10 June 2010, the Conference amended article 8, paragraph 2 (e), of the Statute to include within the jurisdiction of the Court the following war crimes when committed in armed conflicts not of an international character: employing certain poisonous and expanding bullets; employing asphyxiating or poisonous gases, and all analogous liquids, materials and devices; and employing bullets that flatten easily in the human body. These crimes are reflected in new subparagraphs (xiii), (xiv) and (xv), respectively. By the same resolution, the Conference adopted the corresponding elements of crimes.

Review of the Rome Statute: article 124

16. By resolution RC/Res.4 of 10 June 2010, the Conference decided to retain article 124 of the Statute in its current form and agreed to further review its provisions during the fourteenth session of the Assembly of States Parties, to be held in 2015. This article grants to new States parties the possibility to opt out of the jurisdiction of the Court in respect of war crimes allegedly committed by its nationals or on its territory for a period of seven years after entry into force of the Statute for the State concerned.

Enforcement of sentences

17. In its resolution on strengthening the enforcement of sentences (resolution RC/Res.3), the Conference called upon States to indicate to the Court their willingness to accept sentenced persons in their prison facilities and confirmed that a sentence of imprisonment could be served in prison facilities made available though an international or regional organization, mechanism or agency.

III. Judicial proceedings

18. During the reporting period, the Court continued to be seized of the four situations already opened over the preceding period. The situation in Uganda was referred to the Court by that State party on 29 January 2004. The situation in the Democratic Republic of the Congo was referred to the Court by that State party on 19 April 2004. The situation in the Central African Republic was referred to the Court by that State party on 7 January 2005. The situation in Darfur, the Sudan, was referred to the Court by the United Nations Security Council by its resolution 1593 (2005). In all instances, the Prosecutor assessed that there was a reasonable basis to

open an investigation into the situations, based on article 53 statutory criteria. In addition, on 31 March 2010, following a request by the Prosecutor acting under article 15 of the Statute, Pre-Trial Chamber II authorized the Prosecutor to initiate an investigation into a fifth situation, namely Kenya.

19. Investigations into alleged crimes committed in Kenya remain ongoing, and the Prosecutor has not yet issued an application to the Pre-Trial Chamber in respect of any case. In all other situations, the Prosecutor evaluated the available information and decided to open cases. Judicial proceedings have taken place in relation to each of these investigations, resulting in 9 cases involving 16 individuals alleged to have committed crimes within the jurisdiction of the Court. Out of these 16 individuals, one was officially declared dead and the proceedings against him were terminated on 11 July 2007, thus reducing the total number of individuals subject to proceedings before the Court to 15. Details concerning the cases in which there have been judicial developments during the reporting period are given below.

A. *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (situation in Uganda)

20. Warrants of arrest have been outstanding for four alleged members of the Lord's Resistance Army (LRA) relating to the situation in Uganda since July 2005.

21. Joseph Kony, alleged Commander-in-Chief of LRA, is charged with 33 counts, which include 12 counts of crimes against humanity (murder, enslavement, sexual enslavement, rape and inhumane acts) and 21 counts of war crimes (murder, cruel treatment, intentionally directing attacks against a civilian population, pillaging, rape and forced enlistment of children). Vincent Otti, alleged Vice-Chair and Second-in-Command of LRA, is charged with 32 counts, which include 11 counts of crimes against humanity (murder, sexual enslavement and inhumane acts) and 21 counts of war crimes (murder, cruel treatment, intentionally directing attacks against a civilian population, pillaging, rape and forced enlistment of children). Okot Odhiambo, alleged Deputy Army Commander and Brigade Commander of LRA is charged with 10 counts, including 2 counts of crimes against humanity (murder and enslavement) and 8 counts of war crimes (murder, intentionally directing attacks against a civilian population, pillaging and forced enlistment of children). Dominic Ongwen, alleged Brigade Commander of LRA, is charged with 7 counts, including 3 counts of crimes against humanity (murder, enslavement and inhumane acts) and 4 counts of war crimes (murder, intentionally directing attacks against a civilian population, pillaging and forced enlistment of children).

22. On 16 September 2009, the Appeals Chamber upheld the decision rendered by Pre-Trial Chamber II on 10 March 2009, which had ruled that the case against the four accused was admissible before the Court.

23. None of the four accused has been arrested to date. A total of 41 victims have been admitted to participate through their legal representatives in the proceedings in the case.

B. *The Prosecutor v. Thomas Lubanga Dyilo* (situation in the Democratic Republic of the Congo)

24. The Trial of Thomas Lubanga Dyilo started on 26 January 2009 before Trial Chamber I, composed of Judges Sir Adrian Fulford (Presiding), Elizabeth Odio Benito and René Blattmann. Mr. Lubanga is alleged to be the leader of the Union des patriotes congolais and Commander-in-Chief of its military wing, the Forces patriotiques pour la libération du Congo. He is charged with having committed war crimes in the Democratic Republic of the Congo, specifically enlisting, conscripting and using children under the age of 15 years to participate actively in hostilities. A total of 103 victims are participating, through their legal representatives, in the Lubanga case.

25. The prosecution case was presented from 26 January to 14 July 2009. On 14 July 2009, Trial Chamber I issued a decision giving notice to the parties that the legal characterization of facts might be subject to changes in accordance with regulation 55, paragraph 2, of the Regulations of the Court, in particular by including new crimes under articles 7 (Crimes against humanity) and 8 (War crimes) of the Rome Statute. Both the defence and the prosecution appealed that decision. On 8 December 2009, the Appeals Chamber reversed the decision of the Trial Chamber, determining that the Chamber had erred in its interpretation of regulation 55 of the Regulations of the Court, finding, inter alia, that it is the prosecution that is tasked with the investigation of crimes under the jurisdiction of the Court and to proffer charges against suspects.

26. The defence started the presentation of its evidence on 7 January 2010. From January to July 2010, the defence tendered 133 items of evidence and called 19 witnesses to testify over a total of 68 trial days.

27. On 8 July 2010, Trial Chamber I ordered a stay of the proceedings as a consequence of the prosecution's material non-compliance with the Chamber's orders. An appeal of that decision by the prosecution is pending. On 15 July 2010, Trial Chamber I ordered the unrestricted and unconditional release of Thomas Lubanga Dyilo, subject to the appeal and an order of suspensive effect by the Appeals Chamber. On 23 July, the Appeals Chamber granted suspensive effect and the prosecution appealed the decision on release.

C. *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (situation in the Democratic Republic of the Congo)

28. Germain Katanga and Mathieu Ngudjolo Chui are two former leaders of armed groups active in the Ituri region of the Democratic Republic of the Congo: Mr. Katanga allegedly commanded the Forces de résistance patriotiques en Ituri and had been appointed Brigadier General of the Forces armée de la République démocratique du Congo (FARDC); Mr. Ngudjolo Chui was allegedly the former leader of the Front des nationalistes et intégrationnistes and a Colonel in FARDC. They are both charged with seven counts of war crimes (wilful killing, using children to participate actively in hostilities, sexual slavery, rape, attacking civilians, pillaging and destroying the enemy's property) and three charges of crimes against humanity (murder, sexual slavery and rape). These crimes were allegedly committed in connection with the attack on the village of Bogoro on 24 February 2003.

29. The trial of Mr. Katanga and Mr. Ngudjolo Chui started on 24 November 2009 before Trial Chamber II, composed of Judges Bruno Cotte (Presiding), Fatoumata Dembele Diarra and Christine van den Wyngaert. Over 88 trial days, the prosecution tendered 105 items of evidence and called 14 witnesses plus 1 expert witness to testify. The presentation of the prosecution case continued until 16 July 2010, and is scheduled to resume on 23 August 2010. A total of 362 victims are participating in the case through their legal representatives.

D. *The Prosecutor v. Jean-Pierre Bemba Gombo* (situation in the Central African Republic)

30. Jean-Pierre Bemba Gombo is being prosecuted in his alleged capacity of former President and Commander-in-Chief of the Mouvement de libération du Congo for crimes allegedly committed in various locations of the Central African Republic in connection with the non-international armed conflict that took place from 26 October 2002 to 15 March 2003. Charges against Mr. Bemba were confirmed by Pre-Trial Chamber III on 15 June 2009. He is charged with three counts of war crimes (murder, rape and pillage) and two counts of crimes against humanity (murder and rape) in his capacity as a military commander under article 28 of the Rome Statute (Responsibility of commanders and other superiors).

31. On 14 August 2009, the single judge of Pre-Trial Chamber III considered that, based on new circumstances, the conditions for continuous detention of Mr. Bemba were no longer met and ordered his interim release. The implementation of that decision was deferred pending a determination on the necessary arrangements, in particular the State to which he was to be released. Seven States were invited to provide observations on the possible release of Mr. Bemba on their territory. On 2 December 2009, the Appeals Chamber found that the single judge had erred by considering that new circumstances had led to a modification of the ruling on detention and reversed the decision granting interim release.

32. On 18 September 2009, the Presidency referred the case to Trial Chamber III composed of Judge Sir Adrian Fulford (Presiding), Judge Elizabeth Odio Benito and Judge Joyce Aluoch.

33. On 24 September 2009, the Registrar rejected a second application for the payment of legal aid to Mr. Bemba. In his application, Mr. Bemba alleged that in spite of his wealth, he was not in a position to pay the fees because his properties and assets had been frozen or seized by the Court. Trial Chamber III was seized of this issue and on 19 November 2009, issued a decision ordering the Registrar to advance funding in a sum equivalent to the amount of legal aid payable by the Court retrospectively to March 2009 and ongoing until a material change in the circumstances. The Registrar was also requested to search for, freeze and realize Mr. Bemba's assets so as to fund the advance on his legal fees. The trial was then scheduled to start on 27 April 2010.

34. On 25 February 2010, the defence submitted a challenge to the admissibility of the case on the grounds of respecting complementarity between the work of the Court and judicial proceedings in the Central African Republic, an alleged lack of the requisite level of gravity of the case and an alleged abuse of process. This motion motivated subsequent postponements of the date of commencement of the trial. On 24 June 2010, Trial Chamber III rejected the defence motion in totality.

The defence immediately appealed. The issue is currently pending before the Appeals Chamber. On 7 July 2010, Trial Chamber III postponed sine die the commencement of the trial until the resolution of the challenge to the admissibility of the case by the Appeals Chamber. A status conference is scheduled to be held on 30 August 2010 to hear submissions on re-scheduling the date for the commencement of the trial.

35. On 21 July 2010, the composition of Trial Chamber III was amended. The Chamber is now composed of Judge Sylvia Steiner (Presiding), Judge Joyce Aluoch and Judge Kuniko Ozaki. To date, 135 victims have been admitted to participate in the trial proceedings through their legal representatives.

E. *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman* (situation in Darfur, the Sudan)

36. Warrants of arrest against Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman (hereinafter "Ali Kushayb") were issued on 27 April 2007 by Pre-Trial Chamber I for 20 counts of crimes against humanity and 22 counts of war crimes. Mr. Ahmad Harun is alleged to have served as Minister of State for the Interior of the Government of the Sudan at the relevant time, whereas Mr. Ali Kushayb is alleged to have served as a leader of the Militia/Janjaweed. The counts relate to several attacks on the towns of Kodoom, Bindisi, Mukjar and Arawala over a period of time lasting, at least, between 2003 and 2004.

37. On 19 April 2010, the prosecution filed a request with the Pre-Trial Chamber to make a finding under article 87 of the Statute that the Government of the Sudan had failed to cooperate with the International Criminal Court according to Security Council resolution 1593 (2005) in the execution of arrest warrants against Mr. Ahmed Harun and Mr. Ali Kushayb. On 25 May 2010, Pre-Trial Chamber I, composed of Judges Sylvia Steiner (Presiding), Sanji Mmasenono Monageng and Cuno Tarfusser, issued a decision to inform the members of the Security Council about the lack of cooperation by the Sudan. The Pre-Trial Chamber transmitted its decision to the Council, through the Secretary-General, in order for the Council to take any action it might deem appropriate (see S/2010/265).

38. To date, both Mr. Ahmad Harun and Mr. Ali Kushayb remain at large. Six victims have been authorized to participate in pretrial proceedings in the case.

F. *The Prosecutor v. Omar Hassan Ahmad Al-Bashir* (situation in Darfur, the Sudan)

39. A first warrant of arrest against Omar Hassan Ahmad Al-Bashir, current President of the Sudan, was delivered on 4 March 2009 by Pre-Trial Chamber I, comprising Judges Akua Kuenyehia, Sylvia Steiner and Anita Ušacka, for five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts of war crimes (attacking civilians and pillaging). The prosecution appealed a decision rejecting the additional counts of genocide.

40. On 3 February 2010, the Appeals Chamber decided that the Pre-Trial Chamber had applied an erroneous standard of proof in deciding not to issue an arrest warrant in respect of the crime of genocide. This aspect of the decision was reversed and the

Appeals Chamber directed the Pre-Trial Chamber to decide anew, using the correct standard of proof, on whether to issue an arrest warrant in respect of genocide.

41. On 12 July 2010, Pre-Trial Chamber I, composed of Judge Sylvia Steiner (Presiding), Judge Sanji Mmasenono Monageng and Judge Cuno Tarfusser, issued a second warrant of arrest with respect to three counts of genocide. The latter warrant of arrest does not replace or revoke the previous warrant of arrest issued on 4 March 2009, which also remains in effect. Like the first warrant of arrest, the second warrant of arrest was notified to all States parties to the Rome Statute, to the authorities of the Sudan and to all Security Council members that are not parties to the Rome Statute.

42. To date, Mr. Al-Bashir remains at large. A total of 12 victims have been admitted to participate through their legal representative in the proceedings in this case.

G. *The Prosecutor v. Bahr Idriss Abu Garda* (situation in Darfur, the Sudan)

43. Bahr Idriss Abu Garda is the Chairman and General Coordinator of Military Operations of the United Resistance Front. He was charged with three counts of war crimes in connection with an attack perpetrated on 29 September 2007 by the Justice and Equality Movement (JEM), which he allegedly commanded, against the personnel, installations, material, units and vehicles of the African Union peacekeeping mission stationed at the Haskanita military group site.

44. Mr. Abu Garda appeared voluntarily on the basis of a summons to appear delivered by Pre-Trial Chamber I on 7 May 2009. The hearing took place from 19 to 30 October 2009 before Pre-Trial Chamber I composed of Judge Sylvia Steiner (Presiding), Judge Sanji Mmasenono Monageng and Judge Cuno Tarfusser. A total of 87 victims were authorized to participate through their legal representatives in the proceedings of confirmation of charges. Witnesses were heard, including an expert military witness and a victim from among the injured peacekeepers. Four legal representatives represented victims from Nigeria, Mali and Senegal.

45. On 8 February 2010, Pre-Trial Chamber I declined to confirm the charges against Mr. Abu Garda on the ground that the prosecution's allegation that he participated in the attack on the Haskanita military group site was not supported by sufficient evidence. On 23 April 2010, Pre-Trial Chamber I rejected the prosecution's application for leave to appeal the decision rejecting the confirmation of charges. The prosecution stated that it would submit additional evidence.

H. *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (situation in Darfur, the Sudan)

46. On 27 August 2009, Pre-Trial Chamber I issued an under-seal summons to appear against two alleged rebel leaders in the situation in Darfur, the Sudan: Mr. Abdallah Banda Abakaer Nourain, who is the Commander-in-Chief of JEM and Mr. Mohammed Jerbo Jamus, who is the former Chief-of-Staff of the Sudan Liberation Army-Unity. The prosecution alleges that they both participated as co-perpetrators or indirect co-perpetrators to the attack on the Haskanita military

group site on 29 September 2007 (see above, *The Prosecutor v. Bahr Idriss Abu Garda*). They are charged with three charges of war crimes in connection with this attack.

47. The summonses to appear were unsealed on 15 June 2010. On 17 June 2010, Mr. Banda and Mr. Jerbo both appeared voluntarily before Pre-Trial Chamber I composed of Judge Sylvia Steiner (Presiding), Judge Sanji Mmasenono Monageng and Judge Cuno Tarfusser for an initial appearance.

48. The hearing on the confirmation of charges is scheduled to start on 22 November 2010. They remain at liberty pending that hearing.

I. Outstanding warrants of arrest

49. At the time of submission of the present report, nine warrants of arrest were outstanding:

(a) In the situation in Uganda: Mr. Joseph Kony, Mr. Vincent Otti, Mr. Okot Odhiambo and Mr. Dominic Ongwen. These warrants of arrest have been outstanding since 2005;

(b) In the situation in the Democratic Republic of the Congo: Mr. Bosco Ntaganda. This warrant of arrest has been outstanding since 2006;

(c) In the situation in Darfur, the Sudan: Mr. Omar Al-Bashir (two), Mr. Ahmad Harun and Mr. Ali Kushayb. These warrants of arrest have been outstanding since 2007 in the cases of Mr. Harun and Mr. Ali Kushayb, and since March 2009 and July 2010 in the case of Mr. Al-Bashir.

50. The Court has issued requests for cooperation in the arrest and surrender of each of these individuals and notified these to the relevant States. States parties and other States that have legal obligations to cooperate with the Court are required to comply with these requests. In the situation of Darfur, the Sudan, the Government of the Sudan and all other parties to the conflict are obliged to cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to Security Council resolution 1593 (2005).

IV. Investigations and analysis

A. Investigations

1. Situation in the Democratic Republic of the Congo

The Prosecutor v. Thomas Lubanga Dyilo and The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui

51. During the period 1 August 2009 to 30 June 2010, the prosecution conducted 22 missions to 6 countries mainly for the support of trials, to address the arguments raised by the defence in *The Prosecutor v. Thomas Lubanga Dyilo* and in *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

The case of the Kivu provinces

52. During the period 1 August 2009 to 30 June 2010, the Office of the Prosecutor conducted 42 missions to 11 countries for its third investigation in the Democratic Republic of the Congo, focusing on the Kivu provinces. The Office is working on all the groups active in the region, including the Forces démocratiques de libération du Rwanda (FDLR), the Congres national pour la défense du peuple, the regular forces (FARDC) and local defence forces such as the Mai-Mai.

53. As part of its policy of positive complementarity, through which it actively encourages genuine national proceedings, the Office is aiming at a coordinated approach whereby national judicial authorities in the region and beyond, as appropriate, will take over cases in order to ensure that all perpetrators are prosecuted. Given the particular characteristics of the alleged attacks, the Office considered ways to facilitate investigations by the Democratic Republic of the Congo judiciary and contributions to *dossiers d'instruction* against perpetrators. This will require enhanced protection for witnesses and the judiciary. On 17 November 2009, Ignace Murwanashyaka, an FDLR leader, was arrested by police authorities in Germany for allegedly belonging to a terrorist organization and for having committed crimes against humanity in eastern Democratic Republic of the Congo. The Office of the Prosecutor and Germany have been cooperating regarding the Kivus investigation for the past eight months.

54. Moreover, meetings were held with various State representatives, including high-level officials from States not parties to the Rome Statute assisting the Office of the Prosecutor, such as Rwanda.

2. Situation in Uganda

55. The Office of the Prosecutor continued to conduct investigative activities, including five missions to four countries, in relation to the situation in Uganda. The Office has collected a range of information on crimes allegedly being committed by LRA, led by Joseph Kony, operating increasingly freely across a wide area in the Democratic Republic of the Congo, the Sudan and the Central African Republic. According to this information, incidence of LRA crimes continued at a high rate throughout the year, with substantial numbers of killings and abductions. In the period December 2009 to April 2010, LRA is reported to have killed over 500 civilians and abducted over 400 in Niangara territory, Haut Uélé District of Orientale Province in the Democratic Republic of the Congo. For the first time, LRA mutilated civilians in the Democratic Republic of the Congo. The LRA also continued to attack civilians in southern Sudan Western Equatoria State, where, for the first time, in April 2010 LRA attacked a Congolese refugee camp near Ezo. In the Central African Republic, they predominantly perpetrated crimes in Mbomou Prefecture and to a lesser extent in Haut-Mbomou and Haute-Kotto Prefectures. The crimes have resulted in a high number of displaced civilians in the area, over 400,000 in total.

56. Besides LRA, the Office also continued to gather and analyse information in relation to alleged crimes committed by the Uganda People's Defence Forces and related national proceedings.

3. Situation in the Central African Republic

57. The Office of the Prosecutor continued its investigation into the situation in the Central African Republic and conducted 22 missions to 4 countries between 1 August 2009 and 30 June 2010, including for the purpose of assessing witnesses for trial. The Office continued to closely monitor allegations of crimes committed since the end of 2005 and whether any investigation and prosecution has been, or is being, conducted with respect to crimes potentially falling under the Court's jurisdiction. To that end, the Office met with various stakeholders, including with the Minister of Justice of the Central African Republic, Laurent Ngon Baba.

4. Situation in Darfur, the Sudan

58. Between 1 August 2009 and 30 June 2010, the Office of the Prosecutor conducted 25 missions to 11 countries (for the cases against Mr. Harun, Mr. Ali Kushayb and Mr. Al-Bashir, 6 missions to 2 States; for the case with regard to Haskanita, 19 missions to 10 States).

59. In accordance with Security Council resolution 1593 (2005), the Prosecutor presented his tenth and eleventh reports on the status of the investigation into the situation in Darfur to the Security Council on 4 December 2009 and 11 June 2010 respectively.

60. In his briefing to the Security Council on 4 December 2009, the Prosecutor highlighted the lack of cooperation by the Government of the Sudan and the continuation of the crimes on the ground.

61. In his briefing on 11 June 2010, the Prosecutor referred to the decision of Pre-Trial Chamber informing the Security Council about the lack of cooperation by the Sudan in the case against Mr. Harun and Mr. Ali Kushayb (see S/2010/265), which established that the Sudan was not complying with Security Council resolution 1593 (2005).

5. Situation in Kenya

62. On 26 November 2009, the Prosecutor requested authorization from Pre-Trial Chamber II to open an investigation into the situation in Kenya, noting that 1,220 persons had been killed, hundreds raped, with thousands more rapes unreported, 350,000 people had been forcibly displaced and 3,561 had been injured as part of a widespread and systematic attack against civilians. On 31 March 2010, Pre-Trial Chamber II authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed between 1 June 2005 and 26 November 2009.

63. The Office plans to present at least two cases against those most responsible for the post-election violence, including those who coordinated, financed or organized the crimes. The Office aims to finalize the bulk of the investigation during 2010.

64. During the reporting period, the Office conducted 27 missions to 11 countries with regard to the situation in Kenya. These included the first visit of the Prosecutor to Kenya since the beginning of the investigation, from 8 to 12 May 2010. During his visit the Prosecutor met with victims and other persons from all segments of Kenyan society, including President Kibaki and Prime Minister Odinga, who

reiterated their full support for the International Criminal Court and their responsibility for the security of Kenyan citizens.

B. Analysis of activities

65. The Office of the Prosecutor continued to proactively monitor all information on crimes potentially falling within the jurisdiction of the Court, analysing communications received from various sources. As at 30 June 2010, the Office had received a total of 8,792 communications relating to article 15 of the Rome Statute, 559 of which were received between 1 August 2009 and 30 June 2010.

66. During the reporting period, the Office of the Prosecutor continued its preliminary examinations in Afghanistan, Colombia, Côte d'Ivoire, Georgia and Palestine. On 14 October 2009, the Office made public its preliminary examination in Guinea. The Office continued its policy of making its monitoring activities public, subject to confidentiality requirements, when it believes it can contribute to preventing crimes and maximizing the impact of the Court's work.

1. Situation in Afghanistan

67. The Office continued to closely monitor the situation in Afghanistan. In accordance with normal practice, the Office considers all information, including open sources. It maintains close contact with experts, civil society organizations and public officials in the region. In addition, the Office attended and participated in various international academic conferences on Afghanistan. The Office has yet to receive an answer to its requests for information sent to the Government of Afghanistan in 2008.

2. Colombia

68. Upon ratification of the Rome Statute, Colombia made a declaration according to article 124 of the Rome Statute not accepting the Court's jurisdiction with respect to war crimes for seven years. That period came to a close on 1 November 2009. War crimes committed after that date can be investigated and prosecuted by the Office.

69. Colombia's national criminal justice system has made efforts in relation to those responsible for conduct proscribed by the Rome Statute falling into several broad categories.

70. The Office is monitoring and analysing information on investigations and proceedings being conducted in Colombia, focusing on those dealing with the leadership of paramilitary and guerrilla groups and the military who are allegedly responsible for conduct that may fall under the Court's jurisdiction. The Office is also analysing allegations of the existence of international support networks assisting armed groups committing crimes within Colombia that potentially fall within the jurisdiction of the Court. The Office is also monitoring the cases of "parapolitica".

71. Letters requesting information have been sent by the Office to various States. During the reporting period, the Office also met with Colombian stakeholders from the Government, judicial authorities and non-governmental organizations (NGOs), in both Colombia and The Hague.

3. Côte d'Ivoire

72. The Office continued to closely monitor the situation in Côte d'Ivoire.

73. In the context of its examination activities, the Prosecutor inter alia met with the Minister of Justice of Côte d'Ivoire, Mamadou Koné, who briefed the Prosecutor about recent developments in judicial activities in Côte d'Ivoire and reiterated the readiness of the authorities of Cote d'Ivoire to facilitate a visit by the Office of the Prosecutor to Côte d'Ivoire as soon as practicable.

74. The Office is also in contact with third States who may have jurisdiction over some of the alleged crimes committed in Côte d'Ivoire.

4. Georgia

75. During the reporting period, the Office conducted a mission to the Russian Federation in March 2010 and a mission to Georgia in June 2010. Both missions enjoyed the full cooperation of the respective national authorities. The Office had meetings with representatives from the Government and the judiciary and obtained information concerning ongoing investigations being carried out in both States.

76. In accordance with usual practice, the Office also maintains close contacts with NGOs, in which regard the Office participated in meetings and received relevant reports.

5. Guinea

77. The Prosecutor announced on 14 October 2009 that the situation in Guinea was under preliminary examination. The Office took note of serious allegations surrounding the events of 28 September 2009 in Conakry and received information relating to those events in accordance with article 15 of the Rome Statute.

78. During the reporting period, the Office held several meetings with the Minister for Foreign Affairs of Guinea as well as with the Minister of Justice of Guinea, who provided information on modalities put in place for conducting national investigations and prosecutions of those responsible for the alleged crimes, while underlining the importance of combating impunity, in close cooperation with the Office.

79. For the sake of transparency and predictability, the Office also informed States parties in the region.

80. In February and May 2010, the Office conducted missions to Guinea in the context of its preliminary examination activities, for site visits and meetings with Government officials, representatives from the judiciary and civil society, as well as victims and victims' associations.

6. Palestine

81. In connection with the declaration lodged by the Palestinian National Authority under article 12, paragraph 3, of the Rome Statute on 22 January 2009 accepting the jurisdiction of the Court, the Office continues to examine, first, whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements, and second, whether crimes within the Court's jurisdiction have been committed. As the International Criminal Court is a court of last resort,

the Office also considers whether there are national proceedings in relation to alleged crimes, relating to the admissibility of the cases potentially arising from the situation.

82. The Office has received communications from various sources, as well as 15 legal submissions from experts, academics and NGOs on the issue of jurisdiction.

83. In October 2009, upon request of the Office, the Palestinian National Authority presented a preliminary report comprising legal arguments in support of the declaration. A further comprehensive report is expected to be submitted in due course. The Office also exchanged communications with the Embassy of Israel in the Netherlands, from which it inter alia received the Israeli Defense Forces report on Operation Cast Lead, including national efforts undertaken by Israel.

84. In January and July 2010, the Office provided information to the Office of the United Nations High Commissioner for Human Rights (OHCHR) pursuant to its request on steps taken by the Office of the Prosecutor with regard to the Palestinian declaration. In May 2010, the Office published a summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements, without having made any determination on the issue.

85. During the reporting period, the Prosecutor met with various stakeholders, including representatives from the Palestinian National Authority, the secretariat of the League of Arab States, the League of Arab States Independent Fact-finding Committee and a number of Palestinian and Israeli NGOs to discuss, inter alia, the jurisdiction of the International Criminal Court.

V. International cooperation

A. Cooperation with the United Nations

86. Cooperation with the United Nations is based on the Relationship Agreement. Such cooperation continues to be essential to the Court institutionally and in the different situations and cases. A number of United Nations departments and offices, as well as funds, programmes and specialized agencies, have been key partners for the Court. For instance, the Office of the United Nations High Commissioner for Refugees, OHCHR and the United Nations Office on Drugs and Crime have provided support with respect to the protection of witnesses and victims, including in their relocation.

87. The organization and running of the Review Conference was an instance of cooperation between the Court and the United Nations, through the United Nations Office at Nairobi. The Office provided services to the secretariat of the Assembly of States Parties, including conference logistics, conference coordination and services, interpretation for the duration of the meeting in the six official languages of the meeting, translation of in-session documents, coordination of documents reproduction and distribution, information technology infrastructure and security personnel. Such assistance and cooperation contributed to making the Conference a success.

88. In addition, pursuant to article 10 of the Relationship Agreement, the United Nations provided facilities and services for the resumption of the eighth session of the Assembly of States Parties to the Rome Statute, held at United Nations Headquarters from 22 to 25 March 2010.

89. In the area of security, the Court is a member of the United Nations security management system, and is invited to participate in the United Nations Inter-Agency Security Management Network meetings twice a year. This allows the Court to align its standards, regulations and operations with the United Nations and other member organizations in the field.

90. In respect of its operations in the countries of situation, the support and assistance received by the Court from the United Nations is of crucial importance and ranges from the provision of fuel for the Court's vehicles, to the use of United Nations air assets. Since the start of the Court's operations, it has made use of 960 flights operated by the United Nations in support of approximately 2,000 missions.

91. At its eighth session, the Assembly of States Parties established an Independent Oversight Mechanism (resolution ICC-ASP/8/Res.1) and requested the Registrar of the Court to enter into a memorandum of understanding with the Office of Internal Oversight Services of the United Nations Secretariat (OIOS) to provide support services on a cost recovery basis for the operationalization of the oversight mechanism. In addition, the Assembly requested the secondment of a staff member from OIOS. In pursuance of this mandate, the Court has finalized the secondment of a staff member from OIOS, who began her functions on 17 July 2010. The Court is currently finalizing the memorandum of understanding with OIOS.

92. The Court continues to have extensive contact with the Office of Legal Affairs, in particular with respect to the testimony of United Nations officials, the provision of information and the mainstreaming of the Court throughout the United Nations system. The Court also keeps itself apprised on institutional and judicial developments in respect of the cabinets of the Secretary-General and Deputy Secretary-General, the Department of Peacekeeping Operations, the Department of Political Affairs, the Office for the Coordination of Humanitarian Affairs, the United Nations International Children's Fund, the Special Representative of the Secretary-General for Children and Armed Conflict and other relevant actors in the United Nations system.

93. The Court's Liaison Office to the United Nations in New York continued to facilitate and promote cooperation between the Court and the United Nations and its funds, programmes and agencies, as well as between the Court and Permanent and Observer Missions to the United Nations, through sustained contacts and information exchange between the Court, the United Nations and the Missions. The sustained contacts and information-sharing promoted a better understanding of the work and mandate of the Court, thus contributing to enhanced support for and cooperation with the Court.

94. The Head of the Liaison Office continued to participate, in an observer capacity, in relevant sessions of the Security Council and, pursuant to article 4 of the Relationship Agreement, in sessions of the General Assembly. The Liaison Office also facilitated visits and meetings of senior Court officials with their counterparts at the United Nations and frequently updated Court officials on relevant developments within the United Nations, and vice versa.

95. In addition to operational and logistical assistance, the public and diplomatic support of the United Nations continued to be important to the Court. Such support contributed to enhancing awareness of the importance of international cooperation and support from States and other actors.

96. Also, as indicated above, the Prosecutor briefed the Security Council on two occasions on the status of the investigation into the situation in Darfur. In his briefing on 4 December 2009, the Prosecutor inter alia asked for the full support of the Council to ensure that attention remained on the need to arrest persons who are the object of arrest warrants and on the need to end crimes in Darfur. In his briefing on 11 June 2010, referring to the Pre-Trial Chamber's decision informing the Security Council about the lack of cooperation by the Sudan in the case against Mr. Harun and Mr. Ali Kushayb, the Prosecutor expressed the hope that the decision of the judges would be acknowledged and followed up on by the Council before his next report in December 2010, urging Council members to ensure that the arrest of Mr. Harun and Mr. Ali Kushayb is a consistent request of the Organization at all times, through its representatives and envoys in the Sudan, as a critical condition for securing peace and stability in Darfur.

97. The Office of the Prosecutor wrote letters to the members of the Security Council on several occasions, including in relation to outstanding arrest warrants against LRA and against Mr. Bosco Ntaganda, with the goal of updating the members on the activities of the Office, as well as to galvanize support.

B. Cooperation with and assistance from States, other international organizations and civil society

98. The Court made numerous requests to States for cooperation or assistance pursuant to part IX of the Rome Statute. Pursuant to article 87 of the Statute, the content of such requests and related communications is often confidential in nature.

99. In addition to specific requests for cooperation and assistance made pursuant to parts IX and X of the Rome Statute, the Court continued to develop its bilateral exchanges and arrangements for cooperation with States, especially with respect to analysis and investigative activities, asset tracking and freezing, victim and witness protection, arrest operations, the enforcement of sentences and the provisional release of accused persons pending trial.

100. During the reporting period three further agreements on the enforcement of sentences were concluded, with Belgium, Denmark and Finland. This is welcome, as the possibility of sentences being handed down in 2010 and 2011 has increased the need for the Court to find a suitable detention place for sentenced persons. No agreement on provisional release has been entered into, leaving the Court unprepared for the eventuality that a suspect is granted provisional release and cannot, for security reasons, return to their State of nationality.

101. No new witness relocation agreements were entered into with States during the reporting period, although there are negotiations at an advanced stage with a number of States in respect of such agreements. In order to increase the options of the Court for relocating witnesses internationally, the Court opened a new special fund for witness relocation for States to donate funds to finance cost-neutral relocations to third States. The Court has already received a substantial donation to the special

fund. The Court is now approaching States parties to see whether they would agree to enter into a cost-neutral witness relocation agreement with the Court, financed by the special fund.

102. In addition, States parties may also support the establishment of witness protection capabilities in other States where capacity is lacking. This could be done either bilaterally or through multilateral institutions. A number of countries have already indicated their keen interest in this modality, the development of which would further the principle of complementarity that is central to the Rome Statute system.

103. In respect of regional organizations, efforts to finalize a memorandum of understanding between the African Union and the Court have continued. In order to encourage closer relations between the Court and the African Union, the Assembly of States Parties during its eighth session decided to establish a Liaison Office for the Court at the headquarters of the African Union in Addis Ababa (resolution ICC-ASP/8/Res.3, para. 28). On 29 July 2010, the Assembly of the African Union decided to reject for now the request by the Court to open a Liaison Office at the African Union.

104. Discussions are continuing regarding cooperation agreements with the Organization of American States, the League of Arab States and the Commonwealth Secretariat.

105. The Court met regularly with representatives of States, international organizations and civil society to update them on the work of the Court and to discuss items of mutual interest. The Court held two diplomatic briefings in The Hague to update the diplomatic community on the work of the Court. Two strategic-level meetings were held between the Court and representatives of civil society organizations in The Hague, in addition to regular, ongoing contacts between the Court and representatives of civil society.

VI. Institutional developments

A. Elections and appointments

106. An election by the Assembly of States Parties to fill the two judicial vacancies left by the departure of Judges Shahabuddeen and Saiga was held at the eighth session of the Assembly. Judge Silvia Fernandez de Gurmendi and Judge Kuniko Ozaki were elected to the Court by the Assembly, taking up office on 20 January 2010.

107. On 2 March 2010, the Office of the Prosecutor announced the appointment of Professor Tim McCormack as Special Adviser on International Humanitarian Law to the Prosecutor. On 19 June 2009 the Office announced the designation of Professor Jose Alvarez as the Office's Special Adviser on International Law. Both individuals are working ad honorem.

B. Assistance to the Special Court for Sierra Leone

108. From the start of the reporting period until 12 May 2010, the Court continued to provide courtroom services and facilities, detention services and facilities and other related assistance to the Special Court for Sierra Leone in its trial of Charles Taylor in The Hague. In view of the increased trial activity in the Court, however, it was agreed that from 13 May 2010, the Special Court for Sierra Leone would cease to use the courtroom facilities of the Court, and would instead use the facilities of the Special Tribunal for Lebanon. The Special Court for Sierra Leone also vacated three of the four offices it was occupying at the Court.

109. The Special Court for Sierra Leone requested the Court for continued use of the Court's information and communications technology facilities, a vault and a fully equipped office connected to the detention centre for the Taylor defence team, as well as the possibility of using courtroom facilities on an ad hoc basis when necessary. The Court has agreed to those requests, and proposed to extend the memorandum of understanding in respect of only those services that the Court will continue to provide to the Special Court for Sierra Leone, through an exchange of letters detailing such services.

VII. Conclusion

110. There were significant developments in the work of the Court during the reporting period, with the opening of a new situation, three ongoing trials, the dismissal of charges against a suspect, the voluntary appearance pursuant to a summons to appear of two suspects in the Darfur situation, and the issuance of a second warrant of arrest against President Al-Bashir of the Sudan in the same situation. Many challenges remain, but none is more pressing than the execution of the nine outstanding warrants of arrest.

111. In addition, during the reporting period, the system of international criminal justice set up by States in the Rome Statute was reviewed in a Review Conference convened by the United Nations Secretary-General, and amendments to the Statute were made, inter alia in respect of the crime of aggression.

United Nations A/65/314

General Assembly

Distr.: General
19 August 2010

Original: English

Sixty-fifth session
Item 20 (i) of the provisional agenda*
Sustainable development: Harmony with Nature

Harmony with Nature

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 64/196, in which the Assembly invited Member States, the United Nations system, and other stakeholders to transmit to the Secretary-General their views, experiences and proposals on promoting life in harmony with nature. The Assembly requested the Secretary-General to submit a report on the subject to it at its sixty-fifth session. Drawing on the inputs received, the present report addresses how sustainable development approaches and initiatives have allowed communities gradually to reconnect with the Earth. Concrete recommendations are provided to facilitate further consideration of the theme by Member States.

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I. Introduction

1. In 2009, the General Assembly, by resolution 64/196 entitled "Harmony with Nature", invited Member States, the relevant organizations of the United Nations system, and international, regional and subregional organizations to consider, as appropriate, the issue of promoting life in harmony with nature and to transmit to the Secretary-General their views, experiences and proposals on this issue at the sixty-fifth session of the Assembly. The Assembly further invited Member States, the relevant organizations of the United Nations system, and international, regional and subregional organizations to make use of International Mother Earth Day (see resolution 63/278), as appropriate, to promote activities and exchange opinions and views on conditions, experiences and principles for a life in harmony with nature. This is the first report of the Secretary-General on Harmony with Nature.

2. The report benefited from inputs received from Member States, regional groups and, major groups regarding Harmony with Nature and International Mother Earth Day. It further draws information from a number of United Nations reports and publications relevant to the theme and released in recent years, particularly during the period 2009-2010.

3. The report aims to reflect upon the relationship that humans have had with the Earth as well as with their own existence across different stages of civilization, from ancient times to the twenty-first century. In doing so, the report looks at how humans have viewed their existence through the history of medicine and how this is closely related to how they have perceived their relationship with the Earth.

4. The report further addresses how the holistic nature of the concept of sustainable development, pioneered in the early 1980s, has allowed humans to gradually reconnect with the Earth and with themselves. The report places special emphasis on the social and environmental pillars of sustainable development and their interface, an insufficiently discussed theme in international forums.

5. Given that environmental degradation, biodiversity loss, poverty, hunger, malnutrition, diseases and economic instability persist despite the analytical capability and technological capacity deployed by current civilization towards eradicating them, this report looks in particular at the current status of the trends of the educational system on sustainable development worldwide and how education for sustainable development could be strengthened. For sustainable development to succeed, education for sustainable development needs to be mainstreamed worldwide.

6. The report provides an overview of how the lifestyle of the twenty-first century, through its consumption and production patterns, has severely affected the Earth's carrying capacity and how human behaviour has been the result of a fundamental failure to recognize that human beings are an inseparable part of nature and that we cannot damage it without severely damaging ourselves.[1] The report has also benefited from the work undertaken in recent years by Nobel laureates who have interacted with the United Nations, namely Eric Chivian, Muhammad Yunus and Joseph Stiglitz, in the fields of the environment and social and economic issues, respectively.

[1] Eric Chivian, ed., *Biodiversity: Its Importance to Human Health — Interim Executive Summary* (Center for Health and the Global Environment, Harvard Medical School, 2002).

II. International legislation on harmony with nature

7. As early as 1970, the first Earth Day was held as a national teach-in on the environment. Since then, an important number of commemorations related directly to Mother Earth have been held. The following are just some of the few international days in 2010 to honour Mother Earth and its natural resources: International Mother Earth Day, International Day of Nowruz, International Day for Biological Diversity, World Water Day and International Day for the Preservation of the Ozone Layer. The General Assembly declared 2010 the International Year of Biodiversity (resolution 61/203).

8. In 1972, the United Nations Conference on the Human Environment held in Stockholm brought the industrialized and developing nations together to delineate the "rights" of the human family to a healthy and productive environment. A series of such meetings followed, for example on the rights of people to adequate food, to sound housing, to safe water, to access to means of family planning. The recognition of the need to revitalize humanity's connection with nature led to the creation of global institutions within the United Nations system.

9. In 1980, the International Union for the Conservation of Natural Resources (IUCN) published the World Conservation Strategy, a precursor to the concept of sustainable development. The Strategy asserted that conservation of nature cannot be achieved without development to alleviate the poverty and misery of hundreds of millions of people, and stressed the interdependence of conservation and development in which development depends on caring for the Earth. Unless the fertility and productivity of the planet are safeguarded, the human future is at risk.[2]

10. In 1982, 10 years after the Stockholm Conference, the World Conservation Strategy initiative culminated with the adoption of the World Charter for Nature. The Charter stated that mankind is a part of nature and life depends on the uninterrupted functioning of natural systems (General Assembly resolution 37/7, annex).

11. In 1983, the World Commission on Environment and Development was created; by 1984, it was constituted as an independent body by the General Assembly, and asked to formulate a "global agenda for change". In 1987, in its report, "Our Common Future", the Commission advanced the understanding of global interdependence and the relationship between economics and the environment previously introduced by the World Conservation Strategy. The report wove together social, economic, cultural and environmental issues and global solutions. It reaffirmed that the environment does not exist as a sphere separate from human actions, ambitions, and needs, and therefore it should not be considered in isolation from human concerns. The environment is where we all live; and development is what we all do in attempting to improve our lot within that abode. The two are inseparable (A/42/427, pp. 13-14).

12. In June 1992, the first United Nations Conference on Environment and Development was held in Rio de Janeiro and adopted an agenda for environment and development in the twenty-first century, comprising the Rio Declaration on Environment and Development, which recognizes each country's right to pursue social and economic progress and assigned to States the responsibility of adopting a model of sustainable development; Agenda 21, a programme of action for

[2] *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (IUCN/UNEP/WWF, 1980).

sustainable development; and the Statement of Principles concerning forests. Agreements were also reached on the Convention on Biological Diversity and the Framework Convention on Climate Change. That Conference for the first time mobilized the major groups and legitimized their participation in the sustainable development process, which has remained a constant until today. For the first time also, the lifestyle of the current civilization was addressed in principle 8 of the Rio Declaration, in which the urgency of a deep change in consumption and production patterns was expressly and broadly acknowledged by State leaders.[3] Agenda 21 further reaffirmed that sustainable development was delimited by the integration of the economic, social and environmental pillars.

13. The spirit of the Conference was captured by the expression "Harmony with Nature", brought to the fore with the first principle of the Rio Declaration: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature".[4]

14. In 1993, the Economic and Social Council set up the Commission on Sustainable Development to follow up on the implementation of Agenda 21. In June 1997, the General Assembly dedicated its nineteenth special session to designing a Programme for the Further Implementation of Agenda 21 (resolution S-19/2, annex). In 2002, 10 years after the Rio Declaration, a follow-up conference, the World Summit on Sustainable Development, was convened in Johannesburg to renew the global commitment to sustainable development. The Conference agreed on the Johannesburg Plan of Implementation and further mandated the Commission on Sustainable Development to follow up on the implementation of sustainable development.

15. Since the Rio Conference, sustainable development has become part of the international lexicon. The concept has been incorporated in many United Nations declarations and its implementation, while complex, has been at the forefront of world institutions and organizations working in the economic, social and environmental sectors. However, they all recognize how difficult it has been to grant the environmental pillar the recognition enjoyed by the other two pillars despite the many calls by scientists and civil society signalling the vulnerability and precariousness of the Earth since the 1960s.

16. An explanation for this dilemma may be found in the relationship that civilizations over the course of centuries have had with the Earth and also with their own existence, particularly since the industrial revolution. The following sections describe the evolution of that relationship and its lessons for achieving harmony with nature today.

III. Harmony with nature: the ancient heritage of humankind

17. Around the world, ancient civilizations have a rich history of understanding the symbiotic connection between human beings and nature. Ancient sites, many of which the United Nations Educational, Scientific and Cultural Organization (UNESCO) has recognized as part of the world heritage, have a part to play in the spiritual and material life of the twenty-first century.

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[3] See *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum) resolution 1, annex I.

[4] Ibid.

18. Egyptian civilization recognized the vital links between humans, nature and the divine. As the Nile flowed north, the ancient Egyptians believed the sun rose on one side of the river and set on the other and passed through the underworld to begin the cycle again the next day. The bright star called Sirius announced from the heavens the annual floods which brought irrigation and crop-enriching silt. This marker of time, crucial in the development of the ancient calendar around 5,000 years ago, provided a cyclical background to life's rhythms.[5]

19. The Wudang Mountains in Hubei Province, China, are known for their concentration of Taoist monasteries. Taoism, based on the Tao Te Ching, written in the sixth century B.C.E., began teaching people to follow the patterns of nature. Tao in fact means "the way of nature", and the Taoist Statement on Ecology of 1995 declares that Taoism judges affluence by the number of species. Taoism believes that nature itself is divine and that we should live in harmony with nature's cycles and systems.

20. At Fuji-San and the Kii Mountains of Japan, monastic complexes and shrines recognize the powers of nature, harnessed and magnified through living in harmony with natural cycles.

21. The Vedic philosophy of India has always emphasized the human connection with nature. Vedism is a way of life based on scriptures called Aranyakas, or forest books, which were written by sages who lived in the forest. The Mahabharata, Ramayana, Vedas, Upanishads, Bhagavad Gita, Puranas and Smriti contain some of the earliest messages on ecological balance and the need for people's ethical treatment of nature. They emphasize harmony with nature and recognize that all natural elements hold divinity.[6]

22. In the Americas, indigenous cultures, such as the Incas, have a long tradition of respecting the connection between humans and nature. Throughout the Andes, *Pachamama* is the most widespread name for Mother Earth, normally used in Quechua, Aymara and even in Spanish. Anello de Oliva recorded the term in its fundamental sense: "They also worshipped the fertile earth, which they call *Pachamama*: which means fertile and fruitful Mother Earth".[7] The Andean concept of *Pachamama* conveys the symbiosis between humankind and nature, thereby giving nature its due respect.

23. Perhaps the greatest lesson to be learned from the wisdom of sacred traditions is also the simplest: to honour creation by nurturing a kinship with nature. This assertion is most revealing in how ancient civilizations viewed the human body in relation to Mother Earth and how harmony with nature was the essence of good health.

IV. The evolving relationship of human health with nature

A. Nature and human health integrated

24. Most cultures throughout history have viewed the body as a unified phenomenon animated by mysterious life-giving forces. To search out the origins of medicine is to search out the origins of our very humanity. A close study of the

[5] Lorna Oakes and Lucia Gahlin, *Ancient Egypt* (2005).

[6] Rebecca Hind, *Sacred Places* (2007).

[7] E/C.19/2010/4, para. 19.

principles and practices of any given cultural system of medicine will unearth a commonality that is shared in one way or another with many other systems.

25. Egyptian doctors likened the body to a great land. As their own land was nourished and fed by the rivers and irrigation channels, the human body was similarly nourished by its own flowing streams. Egyptian doctors had power over gods and men.[8]

26. As early as 5000 B.C.E., physician-sages formulating the healing traditions of both traditional Chinese medicine and Ayurvedic medicine from India recognized that human beings were composed of body, mind and spirit, and that health represented a harmonious balance within all three of these aspects of existence, as well as the free flow of invisible vital energy, known in China as *qi* and in India as *prana*, throughout the various body systems. These energies are said to be in constant interaction with external or environmental energies, in other words, with nature.

27. The same tenets were also present in the healing traditions of the druids of Europe and in the traditions of ancient Africa, in native American cultures, and in the cultures of other indigenous peoples. The primary role of healers and physicians in each of those traditions was to instruct others in the art and practice of living harmoniously with themselves and their environment.[9]

28. Greek doctors took a holistic view of their patients, who were seen as the embodiment of natural forces that operated harmoniously in states of health but that could fall out of balance in states of disease. This holistic view meant the whole was greater than the sum of its parts. Such a view also informed the philosophy of the ancient Greek physician Hippocrates (c. 460-c. 370 B.C.E.), the father of Western medicine. Greek doctors considered the four elements of fire, earth, air and water as having a profound influence on both philosophy and medicine.[10]

29. Doctors in medieval Europe continued to view the body in similar terms to those described by their Greek forebears. People accepted that the physical, mental, emotional and spiritual elements of the body were interconnected as one whole.

30. Since then, in healing traditions worldwide, medical wisdom has evolved within a framework that linked health to the state of harmony and disease to a state of disharmony or imbalance, and took into account the multiple factors that contributed to both.

B. Nature and human health separated

31. The roots of conventional medicine, that is the drug- and surgery-based mainstream medical procedures that came to dominate in the early twentieth century, can be traced back to the time of Rene Descartes (1596-1650), the scientist and philosopher whose work led certain of his followers to develop Cartesianism, a

[8] Sameh M. Arab, "Medicine in ancient Egypt". Available from www.arabworldbooks.com/articles8c.htm.

[9] Larry Trivieri, Jr., and John W. Anderson, eds., *Alternative Medicine: The Definitive Guide*, 2nd ed. (Berkeley, California, Celestial Arts, 2002).

[10] Vincent Di Stefano, *Holism and Complementary Medicine* (Allen and Unwin, 2006).

philosophy characterized by its rationalistic, dualistic world view. A consequence of Cartesianism was the separation of the mind from the body.[9]

32. Less than 500 years ago, Andreas Vesalius recorded the first reproducible images of the systematic dissection of the human body in a remarkable series of woodcuts. His work *De humani corporis fabrica* (On the Structure of the Human Body) was published in 1543. It became the first textbook of the new science of anatomy. Newly constructed microscopes began to reveal that each body part and organ system consisted of a mosaic of undreamed-of cellular complexes.[10]

33. As the body and its organ systems came under close scrutiny, it was described increasingly in mechanical and functional terms, and the new medicine increasingly severed its connection with the past and with nature. The four elements of fire, earth, air and water described by Greek doctors were nowhere to be found under the microscope, nor was the human soul that had engaged the attention of both Greek philosophers and Christian theologians over the centuries.

34. In the mid-nineteenth century, the discovery of disease-causing microbes further added to the bedrock of conventional medical theory. At the time there were two opposing theories concerning the cause of disease: one theory held that bacteria and viruses caused illness, the other claimed that such microbes became infectious only if inside the various body systems there existed conditions of imbalance or weakness. The germ theory advocated by Louis Pasteur (1822-1895) became dominant and, as a result, modern medical science greatly expanded its role in the treatment of illness.[9]

35. Starting in the late nineteenth century, epidemiologists identified the relationship between poor sanitation and disease in towns and cities swollen by promises of urban industrialization. Sanitary engineers became bolder in their interventions, sewerage systems and piped water supplies became more commonly available. With improvements in transport systems, urban communities began to benefit from the increasing availability of clean water and a constant supply of fresh food.

36. The earlier ways of medicine were steadily left behind as newer scientific approaches began to make their presence felt. Although the ancient scourges of leprosy, diphtheria, malaria, cholera and tuberculosis have been largely overcome through quarantine, vaccination and the use of antibiotics, recent times have seen the emergence of new and deadly viral diseases and the re-emergence of old plagues and pandemics in different parts of the world.

37. As Western medicine probed further into physiology and biochemistry, the health sciences became ever more specialized, as did the emergent disciplines studying the significance of the social, economic and psychological realities of human life.

C. Nature and human health reintegrated

38. In 1925, Jan Christian Smuts brought back from ancient Greek medicine the term holism. He used it to describe a philosophical position that was directed towards an understanding of whole systems rather than particular events or phenomena. It carries the synergetic understanding that the whole is greater than the sum of its parts.

39. Holism operates at a number of levels. The individual cell is a finely balanced system in constant interaction with its surroundings. The human body is similarly endowed and responds as a totality to both interior and exterior changes. Each of us is subject to environmental influences related directly to our home and work spaces, and to the quality of the air we breathe, the water and fluids we drink, and the foods we consume. Our overall health can be influenced at any or all of these levels. Today, we know that the human immune system can be assisted in its activities by far more than just antibiotic drugs or herbal extracts. At present, society is witnessing in places a reorientation of the medical profession towards a holistic approach to disease and healing.

40. According to the World Health Organization, the use of traditional medicine remains widespread in developing countries, while the use of complementary and alternative medicines is increasing rapidly in developed countries.[11] "Traditional medicine" is a comprehensive term that includes traditional Chinese medicine, Indian ayurveda and Arabic *unani* medicine, and various forms of indigenous medicine.

41. In countries where the dominant health-care system is based on allopathic medicine, or where traditional medicine has not been incorporated into the national health-care system, traditional medicine is often termed "complementary", "alternative" or "non-conventional medicine" and it is widely used. In Africa, up to 80 per cent of the population use traditional medicine to help meet their health-care needs. In Asia and Latin America, populations continue to use traditional medicine as a result of historical circumstances and cultural beliefs. In China, traditional medicine accounts for around 40 per cent of all health care delivered.[11]

42. In many developed countries, complementary, alternative or non-conventional medicine is becoming more and more popular. The percentage of the population which has used traditional medicine at least once is 38 per cent in Belgium, 42 per cent in the United States of America, 48 per cent in Australia, 70 per cent in Canada, and 75 per cent in France. Popular use of traditional medicine is fuelled by concerns about the adverse effects of chemical drugs, questioning of the approaches and assumptions of allopathic medicine, and greater public access to health information. Longer life expectancy has brought with it increased risks of developing chronic, debilitating diseases such as cancer, heart disease and diabetes. For many patients, traditional medicine offers a gentler means of healing than allopathic medicine and patients frequently combine the two.[11]

V. Sustainable development: a holistic paradigm for harmony with nature in the twenty-first century

43. Throughout the world, humankind has become increasingly aware that the ways of our present civilization despite all its material progress have not always been beneficial for the Earth or her peoples. Since the 1960s, scientists, researchers, writers, Governments and civil society have been signalling the precariousness of life on Earth.

44. Applying holistic thinking to all human activities is a complex task. Yet the failure to do so has created serious ecological imbalances and environmental

[11] *WHO Traditional Medicine Strategy 2002-2005*.

degradation. Ultimately, environmentally destructive behaviour is the result of a failure to recognize that human beings are an inseparable part of nature and that we cannot damage it without severely damaging ourselves.[12]

A. Education for sustainable development

45. The holistic concept of sustainable development can guide human beings' efforts to rebalance their relationship with the Earth. Such a rebalancing is urgent, as scientists and researchers remind us that we are running out of time.

46. Education is critical if people are to be motivated and informed to take the necessary actions to mend the damage already incurred and avoid further damage to the Earth and its ecosystems. The focus of environmental education has been on teaching respect of nature, but such respect alone has clearly not changed society's destructive behaviour. Respect and appreciation are the first steps towards developing environmentally aware citizens. Effective learning should manifest itself in changes in values and behaviour.[13]

47. People can draw wisdom from the long-established indigenous beliefs and traditions that, within different contexts and structures, have formed the basis for a life in harmony with nature. The "holistic vision" inherent in all of them and the importance given to being in constant communion with nature is perhaps one of their key lessons.

48. A great environmental awakening occurred in the United States in the 1960s and later spread around the world in the wake of the publication of Rachel Carson's *Silent Spring*. The new consciousness of Spaceship Earth was reinforced by satellite photography and environmental disasters such as major oil spills. In response, increased attention began to be paid to the causes of environmentally damaging behaviours.[14] Since then scientists, researchers, writers, environmentalists, civil society and Governments have contributed thousands of books, reports, documents, initiatives and awareness-raising campaigns at the local, national and global levels. They have all sounded and continue to sound the alarm about the dangers to the Earth and its life-support systems. They have addressed different aspects of environmental challenges and have tried to place the environmental pillar on an equal footing with the social and economic pillars. All of them have sought to promote a holistic view of humans and the Earth.

49. Improving overall basic education, let alone for sustainable development, is by and large a work in progress. In 2010 UNESCO reported that today one in five adults is still not literate, two thirds of them women, while 72 million children are not enrolled in school. Millions of youths leave school without the skills they need to succeed in the workplace. Every year millions of children attend school carrying the burden of malnutrition, ill-health and poverty.[15]

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[12] Eric Chivian, ed., *Biodiversity* (see footnote 1).

[13] Daniel T. Blumstein and Charlie Sayan, "The failure of environmental education (and how we can fix it)", 17 April 2007. Available from www.plosbiology.org.

[14] David Yencken, John Fien and Helen Sykes, eds., *Environment, Education and Society in the Asia-Pacific Local Traditions and Global Discourses* (Routledge, 2000).

[15] UNESCO, *Education for All Global Monitoring Report 2010: Reaching the marginalized*.

50. For those with access to education, students have yet to be educated through all the stages of formal education within an educational framework informed by sustainability, or sustainable development, as an overarching principle. While significant improvements are being made to provide more cohesion within any given discipline, we are still far from looking beyond narrow disciplines.

51. Science education at the university level has become ever more specialized, students choosing not only an academic field but a sub-field and even a sub-field of a sub-field. The fragmentation of knowledge makes it difficult to forge cross-disciplinary links.[16]

52. Efforts are afoot in many parts of the world to strengthen science education and to ensure that it produces graduates not only with strong skills in their respective fields but with a broad, holistic view of the sciences in relation to one another, to other academic disciplines and to the real-world problems of sustainable development which scientific inquiry should help humanity to solve.

53. According to the Board on Science Education of the National Academies, the demand in the United States for students with a solid foundation in science continues to grow, but current science education in the country falls short. Significantly improving science achievement will require coordinated changes in science standards, curricula, laboratories, assessments, professional development, and uses of modern technologies. Recent studies show that there is a long way to go. A National Academy of Sciences report of 2007 recommends revising standards to focus on core ideas, designing curricula to build on students' knowledge of the natural world, and aligning assessments with understanding — in short, an overhaul of the entire system.[17]

54. In July 2010, in order to guide the development of new science education standards, the Board on Science Education circulated a draft Conceptual Framework for New Science Education Standards. The framework will identify and articulate the core ideas in science in the disciplines of life sciences, physical sciences, Earth and space sciences, and engineering and technology, cross-cutting ideas and scientific practices. The final report is anticipated in the winter of 2010.

55. In Europe, the situation is similar. Many studies have highlighted an alarming decline in young people's interest in key science studies and mathematics. The European Commission has set up a group of experts to examine a cross-section of ongoing European initiatives and to draw from the elements of know-how and good practice that could bring about a radical change in young people's interest in science studies. Renewal of science teaching practices, including greater cross-disciplinary fertilization, is being promoted by two initiatives, "Pollen" and "Sinus-Transfer".[18]

56. In Asia and the Pacific, home to two thirds of humanity, environmental education in schools has resulted in many educational initiatives such as revision of syllabuses to infuse environmental perspectives, and the establishment of specialized environmental education centres. However, these initiatives remain

[16] Jean-Marc Coicaud, "How to prepare the next generation better?", lecture at the Tokyo University of Foreign Studies, 9 July 2010.

[17] *Taking Science to School: Learning and Teaching Science in Grades K-8* (National Academies Press, 2007).

[18] European Commission, *Science Education NOW: A Renewed Pedagogy for the Future of Europe* (2007).

limited to an outdated concept of environmental education which tends to favour nature conservation, especially through the study of science and geography, rather than the multidisciplinary bases of sustainable development and the holistic imperatives that education for sustainability should serve. Such initiatives also tend to concentrate on information and awareness-raising campaigns directed at individual behavioural change rather than broader educational or sustainability goals.[19]

57. In contrast to what has occurred in other regions, environmental education in Latin America and the Caribbean has traditionally been more closely related to the social sphere than to the ecological one. Since it was introduced in 1993, the concept of education for sustainable development has been gradually accepted in the region and several international and regional summits and conferences related to education for sustainable development have served to further clarify the concept.[20]

58. It is worth highlighting one of the three subregional initiatives, namely, the Andean-Amazon Plan for Environmental Communication and Education (PANACEA), where Bolivia, Brazil, Chile, Colombia, Ecuador, Peru and Venezuela, coordinated by Peru, are focusing on promoting quality environmental education. Most countries in Latin America have a national policy or strategy on environmental education.[20]

59. In Africa, the education sector features prominently in the New Partnership for Africa's Development (NEPAD) together with health, science and technology as key contributors to human development. This all-encompassing approach to the priority areas of NEPAD reflects the holistic approach to sustainable development and corresponds to the principles underlying education for sustainable development. Therefore, the objectives of the United Nations Decade of Education for Sustainable Development (2005-2014) and the Second Decade of Education in Africa launched by the African Union in 2006 are closely aligned.[21]

60. According to a recent UNESCO midterm review[22] of the Decade of Education for Sustainable Development, in Africa the re-orientation of education towards sustainable development requires the strengthening and boosting of the quality and efficiency of human capacity development initiatives (education, training, community development and public awareness programmes). Education for sustainable development has the potential to contribute significantly to the quality of educational programmes.

61. In the Arab region, the Regional Guiding Framework of Education for Sustainable Development (2005-2014) provides a vision of the activities that could be implemented by any of the partners such as education and training institutions, enterprises, international and regional organizations, civil society and non-governmental organizations, within the framework of the Decade of Education for Development. The events organized within the framework of the Decade are

[19] Yencken, Fien and Sykes, *Environment, Education and Society* (see footnote 14).

[20] UNESCO, Políticas, estrategias y planes regionales, subregionales y nacionales en educación para el desarrollo sostenible y la educación ambiental en América Latina y el Caribe: Decenio de las Naciones Unidas de la Educación para el Desarrollo Sostenible, 2005-2014 (2009).

[21] UNESCO, Draft Strategy of Education for Sustainable Development for Sub-Saharan Africa (June 2006).

[22] UNESCO, *Review of Contexts and Structures for Education for Sustainable Development* (2009).

usually linked to the Education for All goals adopted at Dakar in 2000, the Millennium Development Goals adopted in 2000 and the United Nations Literacy Decade (2003-2012).[23]

62. A key tool whose usage needs to be fully maximized in the educational sector is information and communication technologies. Research shows that students gain insights when they use visualizations to link situations, rather than using only text or static drawings. Such tools can help learners to connect salient information to their existing ideas.[24] Information and communication technologies have an indisputable strategic role in the promotion of education for sustainable development. It is necessary to popularize the skills required for their mastery and promote applications adapted to the social, cultural, economic and technical realities of the South.[25]

63. People living in rural communities far from the city usually have limited access to wider-scale information. Their education curricula insufficiently prepare them to compete with those who have been educated in urban areas. The core idea of community resource centres is to make current information and technologies available to younger generations so that they can learn through means other than formal education. A resource centre also provides opportunities for household women, the elderly and farmers, who should be encouraged to take advantage of the information resources provided by such centres. Community resource centres can play a role in furthering knowledge about education for sustainable development.[26]

64. Cross-disciplinary work is in its infancy and, while initiatives exist, information about them remains limited. There are individual and small-scale initiatives around the world which have yet to become mainstreamed into educational policy and practices on a wider scale.

65. One initiative worth mentioning is the transdisciplinary workshop and book project to explore a broader research agenda in environmental education and related fields of the Board on Science Education. The workshop aims to explore new epistemologies and research directions in environmental education and related fields by creating a platform for dialogue on research philosophy, questions and approaches among scholars from a diversity of environment related disciplines. The transdisciplinary epistemologies and research directions emerging from the dialogue will address issues related to the inability of disciplinary research to solve complex environmental problems, and to the need for incorporating epistemological reflection in cross-disciplinary research. The results will be published in 2011.

66. Another such initiative is the Earth System Science Partnership, established in 2001 by four global environmental change research programmes: DIVERSITAS, the International Geosphere-Biosphere Programme, the International Human Dimensions Programme on Global Environmental Change and the World Climate Research Programme. The Partnership facilitates the study of the Earth's environment as an integrated system in order to understand how and why it is

[23] UNESCO, Regional Guiding Framework of Education for Sustainable Development in the Arab Region (draft, May 2008).

[24] Quintana and others, "A scaffolding design framework for software to support science inquiry", *Journal of the Learning Sciences*, vol. 13, No. 3 (2004).

[25] UNESCO, *Education for All* (see footnote 15).

[26] See E/CN.17/2009/4.

changing, and to explore the implications of those changes for global and regional sustainability. The Partnership developed a new strategy that will provide an internationally coordinated and holistic approach to Earth system science. These programmes, in their individual capacity, have existed since the 1990s but it became apparent that they could not individually address the Earth system-level integrative questions, especially those relating to fundamental issues of energy (carbon), food, water and health.

B. Experiences in promoting harmony with nature in the twenty-first century through sustainable development

67. Since the Rio Conference, countries around the world have stepped up to the challenge of achieving sustainable development. A common theme of the initiatives reported to the Secretariat on harmony with nature has been an emphasis on legislation. Major groups also offered their perspective on the matter, highlighting the need to strengthen stewardship of the global commons. The following are some indicative examples of implementation initiatives.

68. Reducing environmental degradation and preserving forests are among Argentina's priorities. Argentina is promoting the use of solar energy and alternative energies based on specific climate conditions and the resource endowments of rural areas. Microfinancing is also being advanced as a means to combat poverty.

69. The new policy of the Foreign Affairs Ministry of the Plurinational State of Bolivia, of 27 August 2007, embodies the concept of well-being, not only in terms of income but most importantly in terms of respect for cultural identity, community and harmony among human beings and between human beings and nature. Essential components of the policy are based on indigenous peoples' vision. Early in 2009, a new Constitution was promulgated on the basis of such principles.

70. On the basis of the International Covenant on Economic, Social and Cultural Rights, Chile emphasizes that the right to health includes a large range of socio-economic factors that promote a healthy life. This right also extends to a healthy environment, food security, nutrition, access to drinkable water and adequate sanitary conditions.

71. Cuba's environmental law (article 4g of Law 81 of 1 July 1997) embraces sustainable development planning as the basic concept and grants that environmental protection will be included as a requisite in all development programmes, projects and plans.

72. Chapter 7 of Ecuador's Constitution of 2008 states that nature's rights should be taken into account in all planning activities. The rights of nature include the right to have its existence respected in an integral manner, including the maintenance and regeneration of its cycles, structures, functions and evolutionary processes, as well as the right to restoration. The State applies the precautionary principle and has the power to restrict those activities which could lead to the loss of species, the destruction of ecosystems or the permanent alteration of natural cycles.

73. El Salvador places emphasis on regional cooperation to address natural disasters which obstruct sustainable development, including through the establishment of a regional fund to prevent and mitigate natural disasters and to assist in the reconstruction of countries affected by them. It also refers to the

promotion of renewable energy and energy efficiency as tools to promote sustainable development.

74. Mexico has set up a programme for environmental education for sustainability run jointly by the Secretariat of the Environment and Natural Resources and the Secretariat of Public Education.

75. Actions to mitigate climate change through sustainable economic growth and lowering carbon emissions are one of Peru's top priorities. Peru has committed itself to stop deforestation of the natural primary forests by 2021.

76. To ensure the sustainability of natural and human resources, Saint Vincent and the Grenadines is constantly reviewing its laws and regulations to reaffirm links tween Mother Nature and food security, poverty eradication, and environmental inability.

77. In Gabon, to reduce the impact of mining activities, environmental and social impact assessments are required through the different stages of mining activities. To combat chemical pollution of soils and aquifers due to plastic waste, Gabon has banned the production, import and use of plastic bags derived from oil and has replaced them with biodegradable bags.

78. Mali is currently engaged in the implementation of a range of projects such as promoting natural sites, agroforestry preservation and the sustainable management of land.

79. Environmental law reform in South Africa has been rooted in the need for improved access to and the sound management of South Africa's natural resource base. The Constitution guarantees the right to an environment that is not harmful to health or well-being, and the right to have the environment protected while promoting justifiable economic and social development.

80. In preserving and conserving nature for sustainable development, article 59 of the Constitution of Cambodia stipulates an obligation of the State to protect the environment, keep natural resources balanced, and manage soundly all natural resources.

81. As the incoming Chair of the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity, Japan focuses on addressing post-2010 targets to improve the state of biodiversity from the current level as well as to increase sustainably the benefits of ecosystem services.

82. Italy emphasizes that education for sustainable development should be promoted as a key policy tool to foster respect for and understanding of different cultures and embrace contributions from them. Indigenous peoples should be partners in the development of educational programmes. In the framework of the Marrakech Task Force on Education for Sustainable Consumption, the document *Here and Now* summarizes the importance of teaching respect for diversity of cultures and making sustainable lifestyle choices.[27]

[27] UNEP, *Here and Now: Education for Sustainable Consumption – Recommendations and Guidelines* (2010).

83. Early in 2007, Montenegro adopted a national strategy on sustainable development promoting the integration of ecological, economic and social principles that will guide the future development of the country.

84. Spain supports a programme of work on a legal article covering the traditional knowledge of indigenous and local communities with traditional lifestyles, recognizing the relevance to the conservation and sustainable use of biological diversity. It also stresses the importance of seeing ecosystems as representing natural capital that generates essential services for human welfare.

85. In the United States, in October 2009, the President signed Executive Order 13514, which has far-reaching ramifications for federal energy conservation and environmental policy. The order includes requirements for federal agencies to improve energy efficiency, for the mitigation of greenhouse gas emissions, and for water conservation, green procurement, waste management and recycling.

86. The European Union recognizes that the natural resource base for human life and development is in great danger and that fundamental changes in the way societies produce and consume are vital for achieving sustainable development. The effective protection and sustainable use of global biodiversity are essential for the social, economic and environmental development of all.

87. Major groups highlight the notion of the "global commons": all material and intellectual resources have to be administered for the good of all mankind, under a perspective of shared and joint ownership. In 2009, Elinor Ostrom became the first woman to be awarded the Nobel Prize in Economic Sciences, in partnership with Oliver Williamson, for her work on the conceptualization and empirical investigation of institutions for the management of the common property resources.

88. States Members of the United Nations have expressed, in General Assembly resolution 64/236, their determination to renew political commitment to sustainable development, a commitment which comes not a minute too soon. For, as Eric Chivian writes, "on the basis of habitat destruction alone, ... as many as two thirds of all species on Earth could be lost by the end of this century, a proportion of lost species that matches the great extinction event, 65 million years ago, that wiped out the dinosaurs. That event was most likely the result of a giant asteroid striking the Earth; this one we alone are causing."[28] By committing themselves, therefore, to sustainable development, Member States have embraced a holistic approach to healing the Earth, which, like holistic medicine, addresses causes rather than symptoms.

89. In May 2010, at the eighteenth session of the Commission on Sustainable Development, Governments acknowledged that the world's depletion of certain natural resources and rapid environmental degradation are the result of unsustainable consumption and production patterns which have led to adverse consequences not only for the Earth but for the health and overall well-being of humanity. Therefore, in order to meet the basic needs of a growing population within the Earth's limited resources, there is a need to devise a more sustainable model for production, consumption and the economy as a whole.

90. The European Union has supported sustainable consumption and production through initiatives such as the SWITCH Asia Programme to promote economic

[28] Eric Chivian, ed., *Biodiversity* (see footnote 11).

prosperity and reduce poverty in Asia while encouraging sustainable growth with reduced environmental impact. In addition, since the mid-1990s many European Union member States have developed "product panels" — interactive and cooperative approaches among different stakeholders to develop and disseminate on the market cleaner and more eco-efficient products.

91. Switzerland has provided funds to the United Nations Industrial Development Organization (UNIDO) over the past decade to set up and support national cleaner production centres in about a dozen countries. This joint programme of UNIDO and the United Nations Environment Programme (UNEP) is an example of putting sustainable consumption and production into practice and responds to a request by developing countries for capacity-building and technology cooperation and transfer. Small island developing States in the Caribbean region have benefited from this initiative.

92. In the unprecedented Yasuni-ITT Initiative, Ecuador has decided to abstain indefinitely from exploiting oil reserves estimated at 846 million barrels in the ITT field, equalling 20 per cent of the national oil reserves. In exchange, Ecuador will receive international financial aid to the Yasuni Fund, an international trust fund to be administered by the United Nations Development Programme. By taking this initiative, Ecuador takes a holistic approach to biodiversity conservation, combating poverty, promoting social development and the rights of indigenous peoples, and proposes a new model of cooperation between developed and developing countries based not on the extraction of non-renewable resources but on providing incentives to environmental stewardship that supplies global public goods like biodiversity conservation and climate change mitigation.

93. For Pacific small island developing States, a successful initiative has been the promotion of renewable energy and the establishment of the Asia-Pacific Regional Help Desk on Sustainable Consumption and Production in 2006.

94. In the Asia-Pacific region, the Asia-Pacific Partnership on Clean Development and Climate is an initiative to accelerate the development and deployment of clean energy technologies. The partners, Australia, Canada, China, India, Japan, the Republic of Korea and the United States, have agreed to work with private sector partners to meet goals for energy security, air pollution reduction, and climate change mitigation in ways that promote sustainable economic growth and poverty reduction.

95. Civil society groups have been very effective in bridging realities on the ground with political interest and actions on sustainable consumption and production. Together with the academic community, they have played an important role in raising awareness, developing tools (such as life cycle analysis), facilitating consumer-led projects or certification programmes, and initiating practical local actions. They have contributed to the gradual mainstreaming of sustainability principles in modern lifestyles.

96. The private sector plays a critical role in re-engineering the supply and production chain for sustainability by focusing on introducing the appropriate changes in the production life cycle for increased eco-efficiency, including research and development in environmentally sound technologies, eco-efficient manufacturing, green marketing, and end-of-life management.

C. New directions and approaches

97. At present, alternatives are being examined to devise a more sustainable model for production, consumption and the economy as a whole so as to promote harmony with nature. In this regard, in February 2008, at the request of the Government of France, Joseph Stiglitz, Amartya Sen and Jean-Paul Fitoussi created the Commission on the Measurement of Economic Performance and Social Progress. "The motivation was that the GDP, as an expression of purely economic growth, no longer satisfies societies' concerns with welfare and sustainability. This is especially the case if our metrics do not take into account sustainability, if current consumption puts in jeopardy, for instance, future living standards. The most obvious cases involve depletion of resources and the degradation of the environment."[29]

98. The Commission acknowledges that no single number can summarize anything as complex and variegated as "society". But, inevitably, certain numbers — in particular GDP — have taken centre stage. The Commission agreed that such a number may be misleading if it were applied to all purposes, and especially as a broader measure of societal performance. It recommended further research into the development of metrics contributing to a better assessment of economic performance and social progress.[30]

99. With regard to the role of the private sector, Muhammad Yunus in his latest book defines social business as a new category of business which excludes the pursuit of profit or the payment of dividends to owners. "All the business savvy developed in conventional business will be very useful, but the goals and values to pursue will be different. While conventional companies exist to make money, these exist to solve social problems while using business techniques and models."[31]

100. Social business and social entrepreneurship are valuable recent innovations, yet their global reach remains modest as compared with that of for-profit business. The corporate social responsibility movement and the civil society watchdog efforts are vitally important to ensure substantial changes in the way companies do business.

VI. Conclusion and recommendations

101. The present technological age has seen an impoverishment in the historical relationship between human beings and nature. Nature has been treated as a commodity that exists largely for the benefit of people, and all environmental problems as solvable with a technological fix. Loss of biodiversity, desertification, climate change and the disruption of a number of natural cycles are among the costs of our disregard for nature and the integrity of its ecosystems and life-supporting processes. As recent scientific work suggests,[32] a number of planetary boundaries are being transgressed and others risk being so in a business-as-usual world.

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[29] Joseph Stiglitz, Amartya Sen and Jean-Paul Fitoussi, "The measurement of economic performance and social progress revisited: reflections and overview", 16 September 2009. Available from www.stiglitz-sen-fitoussi.fr/en/documents.htm.

[30] Ibid.

[31] Muhammad Yunus, *Building Social Business* (New York, Public Affairs, 2010).

[32] J. Rockstrom and others, "A safe operating space for humanity", *Nature*, vol. 461, No. 7263 (24 September 2009), pp. 472-475.

102. The philosophy of holism, embodied in the concept of sustainable development, rests on an understanding that all things are interconnected and that nothing occurs in isolation. Holism calls for broader perspectives. As the spirit of holism begins to infuse the practice of health care, we come closer to that healing that is needed at all levels. As the wheel of medicine now turns towards a commitment to those principles that further the health of individuals, of society, and of the planet as a whole, so turns the wheel of sustainable development.

103. The submissions of Member States, regional groups, major groups and the United Nations system have revealed a variety of ways in which diverse stakeholders are seeking to promote harmony with nature through sustainable development. Member States may wish to consider the following recommendations:

(a) The UNESCO Education for All initiative and the Decade of Education for Sustainable Development should be further promoted:

(i) To increase children's access to school, and take measures to increase literacy rates, particularly for women, and make information on sustainable development accessible to all, including the most vulnerable and marginalized segments of the population;

(ii) To promote the use of information and communication technologies, in both formal and non-formal education in urban and rural areas, to advance education in general and education for sustainable development in particular, including education on sustainable consumption and production;

(iii) To promote the establishment of resource centres, particularly in rural areas, to bring non-formal education to communities on all aspects of sustainable development. In this regard, the use of information and communication technologies and audio-visual material is essential to bridge the knowledge gap;

(b) In view of the current work being carried out in the educational sector worldwide to upgrade science education and to advance cross-disciplinary science education at all levels within a sustainable development perspective:

(i) An information portal should be created to gather information about the work being undertaken to advance integration and cross-disciplinary work in the sciences and to inform them with a sustainable development perspective;

(ii) A virtual space should be created for natural and social scientists to interact and collaborate to provide substantive analytical inputs to the preparations for the United Nations Conference on Sustainable Development in 2012 and beyond;

(c) In view of the need for a continual updating and upgrading of knowledge, relevant United Nations organizations, institutions, research centres and Nobel laureates should be invited, as appropriate, to provide regular briefings for decision makers on:

(i) The work being carried out in the field of systems thinking;

(ii) The ongoing research being undertaken to integrate the three pillars of sustainable development;

(iii) The work being carried out worldwide to reconcile conventional and complementary medicine in a holistic approach to health in the context of sustainable development.

United Nations A/65/315

General Assembly

Distr.: General
19 August 2010

Original: English

Sixty-fifth session
Item 74 of the provisional agenda*
Report of the International Criminal Court

Expenses incurred and reimbursement received by the United Nations in connection with assistance provided to the International Criminal Court

Report of the Secretary-General

Summary

The present report is submitted pursuant to paragraph 10 of General Assembly resolution 64/9, in which the Assembly emphasized the need for the Secretary-General to inform the Assembly at its sixty-fifth session of the expenses incurred and reimbursements received by the United Nations in connection with assistance provided to the International Criminal Court.

* A/65/150.

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1. During the period from 1 August 2009 to 30 June 2010, the United Nations provided facilities and services to the International Criminal Court in the amount of $534,913, including International Telecommunications Satellite Organization (INTELSAT) satellite communications, conference and related services, costs for staff who worked exclusively on matters pertaining to the Court, language proficiency examinations, field security and library services. In addition, during the same period, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) provided transportation and other services amounting to $48,407 to the International Criminal Court.

2. Additional expenses in the amount of $805,478 were incurred by the United Nations Office at Nairobi, the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the United Nations Office at Geneva and the United Nations Logistics Base, Brindisi, Italy, for services provided for the same period.

3. The Court has regularly reimbursed the United Nations upon receipt of invoices.

4. A narrative of itemized details of facilities and services provided to the Court for the period from 1 August 2009 to 30 June 2010 by the United Nations and MONUC are contained in annexes I and II, respectively, and by the various offices away from Headquarters in annex III.

Annex I

Itemized list of facilities and services provided by the United Nations to the International Criminal Court from 1 August 2009 to 30 June 2010

(In United States dollars)

Service provided	*Amount*
Services shared by the International Criminal Court for International Telecommunications Satellite Organization (INTELSAT) satellite communications charges and maintenance	211 680.00
Payroll costs for the staff assigned to work exclusively on matters pertaining to the Court as referenced in the agreement for the pay periods covering January to June 2010	55 587.81
Services provided for participation in the Dag Hammarskjöld Library consortium membership for access to the online services of the United Nations System Electronic Information Acquisitions Consortium	26 107.66
Costs billed to the Court to recover salary overpayment from a staff member who separated from the International Criminal Tribunal for Rwanda and joined the International Criminal Court	2 098.89
Costs related to 2008-2009 language proficiency examinations for staff members of the Court	30 900.00
Services provided to staff of the Court for participation in the security certification programme (No. 9) in Glen Cove, New York, from 29 November to 18 December 2009	4 465.00
Costs related to the Court's share of jointly financed activities for field security for the biennium 2008-2009 and initial appropriation of 2010 portion	67 007.40
Costs incurred in connection with the engagement of a consultant to assist in the maintenance of a tracking system for cases related to the Democratic Republic of the Congo	45 000.00
Costs incurred in connection with the engagement of a contractor for service rendered during the period from 15 to 19 March	875.00
Conference services rendered by the Department for General Assembly and Conference Management for the eighth resumed session of the Assembly of States Parties to the International Criminal Court held in New York from 22 to 25 March 2010	91 191.33
Total	**534 913.09**

Annex II

Summary of support provided by the United Nations Organization Mission in the Democratic Republic of the Congo to the International Criminal Court from 1 August 2009 to 30 June 2010

Services provided	*Aug 2009*	*Sept 2009*	*Oct 2009*	*Nov 2009*	*Dec 2009*	*Jan 2010*	*Feb 2010*	*March 2010*	*April 2010*	*May 2010*	*June 2010*	*Total*
ID card issued to staff of the International Criminal Court	1 292	—	—	—	—	—	—	—	—	—	—	1 292
Transportation service	—	—	211	—	—	218	—	484	—	—	—	913
Airfare for staff of the International Criminal Court	16 043	—	—	—	30 159	—	—	—	—	—	—	46 202
Total	**17 335**	**—**	**211**	**—**	**30 159**	**218**	**—**	**484**	**—**	**—**	**—**	**48 407**

Annex III

Summary of support provided by offices away from Headquarters to the International Criminal Court from 1 August 2009 to 30 June 2010

Office	*Services provided*	*Aug 2009*	*Sept 2009*	*Oct 2009*	*Nov 2009*	*Dec 2009*	*Jan 2010*	*Feb 2010*	*March 2010*	*April 2010*	*May 2010*	*June 2010*	*Total*
International Criminal Tribunal for Rwanda													
	Fuel	—	—	—	—	—	—	252	137	—	—	—	389
	Daily subsistence allowance	—	—	—	—	—	—	978	534	—	—	—	1,512
	Office equipment	—	—	—	—	—	—	1 676	914	—	—	—	2 590
	Driver replacement cost	—	—	—	—	—	—	321	175	—	—	—	496
	Overtime	—	—	—	—	—	—	51	28	—	—	—	
	Subtotal	—	—	—	—	—	—	**3 278**	**1 788**	—	—	—	**4 987**
International Tribunal for the Former Yugoslavia													
	Reimbursable loan	—	—	—	—	—	31 477	45 726	44 515	36 579	35 366	32 287	225 950
	Training course participation	914	380	—	—	—	—	—	—	—	—	—	1 294
	Subtotal	**914**	**380**	—	—	—	**31 477**	**45 726**	**44 515**	**36 579**	**35 366**	**32 287**	**227 244**
United Nations Office at Geneva													
	Security costs provided during the visit of the Prosecutor of the International Criminal Court to Geneva (3-4 Nov. 2009)	—	—	—	228	—	—	—	—	—	—	—	228

Office	*Services provided*	*Aug. 2009*	*Sept. 2009*	*Oct. 2009*	*Nov. 2009*	*Dec. 2009*	*Jan. 2010*	*Feb. 2010*	*March 2010*	*April 2010*	*May 2010*	*June 2010*	*Total*
United Nations Office at Nairobi													
	International Criminal Court Review Conference of the Rome Statute, Kampala, 31 May-11 June 2010: interpretation; documentation; and conference services	—	—	—	—	—	—	—	—	—	—	571 298	571 298
United Nations Logistics Base at Brindisi, Italy													
	Participation in training course offered by the Communications and Information Technology Service	—	—	—	—	—	—	—	1 721	—	—	—	1 721
Total		**914**	**380**	**—**	**228**	**—**	**31 477**	**49 084**	**48 024**	**36 579**	**35 366**	**603 585**	**805 478**